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The CONDUCT OF and PROCEDURE AT
**PUBLIC, COMPANY AND LOCAL
GOVERNMENT MEETINGS**

Seventeenth Edition

THE
CONDUCT OF AND PROCEDURE AT
**PUBLIC, COMPANY AND
LOCAL GOVERNMENT
MEETINGS**

(The Companies Act, 1929, the
Local Government Act, 1933,
the Public Order Act, 1936, and
the London Government Act,
1939)

BY

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TO

HAROLD R. OXBORROW

PRESIDENT

LONDON ASSOCIATION OF CERTIFIED ACCOUNTANTS

1938-1939

PREFACE TO THE SEVENTEENTH EDITION

THIS edition has been newly set up in type, thus affording an opportunity of recasting and re-arranging the text. New leading cases which define and illustrate the principles governing the conduct of and procedure at meetings generally have been included. The relevant sections and schedules of the London Government Act, 1939, affecting "Meetings," which comes into operation to-day, have been included. This Act in the main makes no change in the law, repeals and re-enacts, in modern form, provisions contained in a large number of Statutes dating from the time of Henry VIII, and brings the law into harmony with that prevailing in England and Wales.

This new edition owes much to the careful work of Evelyn Miles of the Chancery Bar, to whom grateful acknowledgment is due.

The Index, Table of Cases, and Table of Statutes have been again thoroughly revised by the Author's Clerk, G. E. Mead, who has also carefully checked every reference in the text.

A. C.

3 PLOWDEN BUILDINGS,
TEMPLE, E.C.4.

New Year's Day, 1940

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A. C.	Appeals (House of Lords & Privy Council) from 1891.
All E. R.	All England Reports.
App. Cas.	Appeals (House of Lords & Privy Council) 1876-1890.
A. & E.	Adolphus & Ellis's Reports.
Atk.	Atkyn's Reports.
B. & Ald.	Barnewall & Alderson's Reports.
B. & C.	Barnewall & Cresswell's Reports.
B. & P.	Bosanquet & Puller's Reports.
B. & S.	Best & Smith's Reports.

Bac. Abr. . .	Bacon's Abridgment.
Barn. K. B. .	Barnardiston's Reports.
Beav. . .	Beavan's Reports.
Bing. . .	Bingham's Reports.
Bing. N. C. .	Bingham's New Cases.
C. B. . .	Common Bench Reports.
Ch. . .	Chancery Appeals, Law Reports.
Ch. D. . .	Law Reports (New Series) Chancery Division.
C. & P. . .	Carrington & Payne's Reports.
C. P. D. . .	Common Pleas Division.
Cowp. . .	Cowper's Reports.
Cox C. C. .	Cox's Criminal Cases.
Cr. App. Cas.	Criminal Appeal Cases.
Cr. & M. . .	Crompton & Meeson's Reports.
Cr. & Ph. . .	Craig & Phillips' Reports.
De G. J. & S.	De Gex, Jones & Smith's Reports.
De G. M. & G.	De Gex, Macnaghten & Gordon's Reports.
East . . .	East's Reports.
E. & B. . .	Ellis & Blackburn's Reports.
E. & E. . .	Ellis & Ellis's Reports.
Eq. . .	Equity Reports.
Esp. . .	Espinasse's Reports.
Ex. . .	Exchequer Reports.
F. . .	Fraser's Scotch Session Cases.
F. & F. . .	Foster & Finlason's Reports.
Freem. K. B.	Freeman's King's Bench Reports.
H. L. . .	House of Lords.
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INTRODUCTION

THE Procedure at and Conduct of Meetings of Local Authorities are generally governed by Statutory Regulations and/or set Rules called "Standing Orders"; those of Limited Companies by their Articles of Association.

To avoid confusion in debate and to expedite business, it is always desirable to have clear and definite rules for regulating the proceedings of any body which meets at regular intervals. Public Meetings held occasionally for some religious, political, or social object should be subject to a prearranged order of conduct, so that neither the speakers nor the hearers may be unnecessarily irritated.

A successful Meeting largely depends upon the sympathy which exists between the platform and the audience, and this sympathy will be endangered by a lack of method in its conduct and a want of knowledge of the rules and principles which govern the holding and proceedings of Meetings. A well-ordered Meeting is conducive to good feeling, and this result cannot be attained without attention to the organisation of its proceedings and a defined method in the conduct of its debate.

In PART I, the general principles and rules for the procedure at Public and other Meetings are discussed and laid down.

PART II is confined to the Law and Practice relating to Meetings of Companies, whether Chartered, Statutory, or Limited. When reference is made to Table A it should be always understood that the

provisions contained therein only, as a rule, refer to Limited Companies which have not elected to furnish themselves with special Articles of Association which have been duly registered. (See, however, Section 8 of the Act of 1929.)

PART III deals with the important subject of the Law and Practice relating to Meetings of Local Authorities.

The Appendices comprise Notes and Definitions of Terms, the Local Authorities (Admission of the Press to Meetings) Act, 1908, Clauses in Table A relating to Meetings, a section on Free Speech and Blasphemy, Forms of Notices, Resolutions of Meetings, Agenda Papers, Minutes, and Test Questions.

P A R T I

PUBLIC MEETINGS, OTHER THAN COMPANY AND
LOCAL GOVERNMENT MEETINGS

CHAPTER I

WHAT IS A MEETING ?

MEETINGS

WHAT is a meeting ?—A meeting is an assembly of people for any lawful purpose, or for the transaction of business of common interest. “The word ‘meeting’ implies a concurrence or coming to face of at least two persons” (*Sharp v. Dawes*, 1876, 46 L. J., Q. B. 104), so that, generally speaking, there can be no meeting of shareholders or of any body if only one attend personally, even if that one holds the proxies of many others.

One swallow does not make a summer, nor does the presence of one shareholder constitute a meeting (*re Sanitary Carbon Co.*, 1877, W. N. 223), but see *East v. Bennett Bros.* (*post*, p. 191).

A *meeting* (which must usually consist of two or more persons) is generally the coming together of a number of persons *elected* by the general body of members of a corporation or society, though the name may also be given to a coming together of the members of a corporation, company, or society. It exercises, as a rule, independent and plenary powers, and passes *resolutions* binding the whole body.

Public Meetings.—The Public Order Act, 1936, s. 9 (1), defines the following terms:—

“Meeting” means a meeting held for the purpose of the discussion of matters of public interest or for the purpose of the expression of views on such matters.

“Public meeting” includes any meeting in a public place and any meeting which the public or any section thereof are permitted to attend, whether on payment or otherwise.

“Public place” means any highway, public park or garden, any sea beach, and any public bridge, road, lane, footway, square, court, alley, or passage, whether a thoroughfare or not ; and includes any open space to which,

for the time being, the public have or are permitted to have access, whether on payment or otherwise.

By the Law of Libel Amendment Act, 1888, s. 4, a public meeting is defined as any meeting *bonâ fide* and lawfully held for a lawful purpose, and for the furtherance or discussion of any matter of public concern, whether the admission thereto be general or restricted. Another definition is: any lawful meeting called for the furtherance or discussion of a matter of public concern, to which the public, or any particular section of the public, is invited or admitted, whether the admission thereto is general or restricted (Report of Home Office Committee, 1909; see *post*, p. 77).

The *requisites of a valid meeting* are :—

1. It must be properly convened, *i.e.* a proper notice must be sent by the proper summoning authority to every person entitled to be present.
2. It must be properly constituted. To constitute a meeting it is essential—
 - (a) That the properly appointed person is in the chair, since the chairman is necessarily an integral part of a meeting. The appointment of chairman is usually regulated by statute, standing orders, articles or rules and regulations.
 - (b) That a quorum is present. The quorum is likewise regulated by statute, standing orders, articles or rules and regulations. If there is no such provision, custom decides what shall be a quorum, which must consist of at least two persons, but see *post*, p. 42.
3. It must be properly held in accordance with the standing orders, articles, or regulations governing its constitution.

COMMITTEES

A committee is a body of persons appointed or elected by a society, corporation, or public meeting for some special business or function, with or without plenary powers. A committee may consist of one person. “A committee means

a person or persons to whom powers are committed which would otherwise be exercised by another body" (*re* Taurine Co., 1883, 25 Ch. D., at p. 132). It exercises limited powers, which may be modified or withdrawn by its appointing authority. Its decisions are usually in the form of *recommendations* which require the adoption or approval of its appointing authority.

"The term 'committee' means an individual or a body to which others have committed or delegated a particular duty, or who have taken on themselves to perform it in the expectation of their act being confirmed by the body they profess to represent or act for" (*Reynell v. Lewis*, 1846, 15 M. & W., p. 529).

Sub-Committee.—A *sub-committee* stands in the same relation to a committee as a committee does to a meeting, and can only act within the limits prescribed by its appointing authority, *i.e.* a committee. Delegating to a sub-committee does not imply a parting with the powers granted by the committee which grants the delegation, but confers an authority to do things which otherwise the committee would do itself. Such powers delegated to the sub-committee can be resumed at any time by the appointing committee (*Huth v. Clarke*, 1890, 25 Q. B. D., p. 391). Such sub-committee must report to the committee; the existence of a sub-committee expires with the existence of its creating body.

As to meetings of committees and sub-committees, see *post*, p. 35.

WHERE MEETINGS MAY BE HELD

Place of meeting.—The meeting must be held at the time and place prescribed, or if there be none such, at a time and place reasonably convenient for the majority of those who are entitled to attend. See *post*, p. 15.

No public meeting of more than fifty persons can be held within one mile of Westminster Hall during a Session of Parliament (Seditious Meetings Act, 1817).

Local authorities often permit public meetings to be held in defined areas under their jurisdiction and make by-laws

for their regulation, which if within the scope of the authority of the statute conferring that power on them, are enforceable (*Slee v. Meadows*, 1911, 75 J. P. 246).

Meetings may be convened for any lawful purpose on any day and time and in any place, provided such persons have the right to occupy that place, and that that place complies with any statutory enactment or by-laws which may have been made affecting the safety of those attending. The Trade Union Act, 1913, s. 3, however, restricts the application of trade union funds for the holding of political meetings.

Meetings on highways.—There is no right to hold meetings for any purpose on public highways (see *M'Ara v. Magistrates of Edinburgh*, *post*, p. 8), or on private highways (see *Hampstead Garden Suburb Trust v. Denbow*, *post*, p. 8), since a highway only exists for the purpose of passage. Whilst there is no right to hold such a meeting, the fact that a public meeting is held upon a highway does not necessarily make the meeting unlawful. Whether it is unlawful or not depends upon the circumstances in which it is held, *e.g.* whether or not an obstruction is caused. "The justices had no right to assume that simply because the meeting was held on a highway it could be interrupted notwithstanding the provisions of the Public Meeting Act, 1908" (*Burden v. Rigler*, 1911, 1 K. B., p. 340).

No right on the part of the general public to hold meetings on a common is known to the law (*De Morgan v. Metropolitan Board of Works*, 1880, 5 Q. B. D. 155), and consequently a by-law prohibiting public meetings on a common is valid. There is no right to hold public meetings in the Royal Parks unless specific regulations so provide (*Bailey v. Williamson*, 1873, L. R., 8 Q. B. 118). Similarly there is no right to hold public meetings in Trafalgar Square except by regulation of the First Commissioner of Works. "A claim on the part of persons so minded to assemble in any numbers, and for so long a time as they please to remain assembled upon a highway to the detriment of others having equal rights, is in its nature irreconcilable with the right of free passage, and there is, so far as we have been able to ascertain,

no authority whatever in favour of it. It was urged that the right of public meeting, and the right of occupying any unoccupied land or highway that might seem appropriate to those of Her Majesty's subjects who wish to meet there, were, if not synonymous, at least correlative. We fail to appreciate the argument, nor are we at all impressed with the serious consequences which it was said would follow from a contrary view. There has been no difficulty experienced in the past, and we anticipate none in the future, when the only and legitimate object is public discussion, and no ulterior and injurious results are likely to happen. Things are done every day, in every part of the kingdom, without let or hindrance, which there is not and cannot be a legal right to do, and not unfrequently are submitted to with a good grace because they are in their nature incapable, by whatever amount of user, of growing into a right" (*ex parte* Lewis, 1888, 21 Q. B. D., p. 197).

"The primary and over-ruling object for which streets exist is passage. The streets are public, but they are public for passage, and there is no such thing as a right in the public to hold meetings as such in the streets. . . . Streets are for passage, and passage is paramount to everything else. That does not necessarily mean that any one is doing an illegal act if he is not at the moment passing along. It is quite clear that citizens always meet in the streets, and may stop and speak to each other. The whole thing is a question of degree, and nothing else. . . . The right of free speech is to promulgate your opinions by speech so long as you do not utter what is treasonable, or libellous, or make yourself obnoxious to the statutes that deal with blasphemy or obscenity. But the right of free speech is a perfectly separate thing from the question of the place where that right is to be exercised. . . . Open spaces and public places differ very much in their character, and before you could say whether a certain thing could be done in a certain place, you would have to know the history of the particular place. . . . Here we are dealing with a street proper. . . . It is a thoroughfare. . . . In such a place there is not the slightest right in any one to hold a meeting as such. . . . The magistrates . . . have got to

consider two things, first, whether what is going on in the streets is at all likely to interfere with . . . the right of passage; and, secondly, whether what is going on is likely to lead to a breach of the peace" (*M'Ara v. Magistrates of Edinburgh* (1913, S. C., at p. 1073)).

In *Aldred v. Miller* (1924, S. C. 117) it was held, on the assumption that a public street may be lawfully used as a place for public meeting, that such meeting must be conducted so as not to interfere with other public uses of the street. "There is no such thing as a private right in any individual to make use of any public street for holding public meetings. If the thing is done at all, it must be done with due regard to the equal participation of all the members of the public in the various uses for which public streets are kept open. The duty of the police is to vindicate public right, and not to facilitate abuse of the street by any individual of his own."

In *Hampstead Garden Suburb Trust v. Denbow* (1913, 77 J. P. 318), it was held that a company had a right to restrain a public meeting being held in a private road on their land which was not dedicated to the public, and along which there was no public right of way.

CHAPTER II

ADVERTISEMENT AND NOTICE OF MEETINGS

ORGANISATION OF MEETINGS

IN the absence of statutory rules, standing orders, or other regulations, the promotion and convening of public and other meetings necessarily depend on the object of the proposed meeting.

It is evident that either some established body or some definite persons should be responsible for the organisation and consequent expenses which a properly conducted meeting entails. It is therefore incumbent on that body or those definite persons to meet beforehand and settle the preliminaries, such as the hire of hall, advertising, printing, and the like.

A secretary and a treasurer are necessary officers, and the management should be entrusted to a small working committee, whose proceedings and orders should be duly minuted, and whose accounts should be carefully kept and audited.

If the meeting is of a minor character and the expenses small, the promotion and convening may be left to one person, but as a rule it is essential that there should be some definite organisation to promote and conduct meetings at which the attendance may be large and the expenses connected therewith not inconsiderable.

ADVERTISEMENT

If the proposed meeting is one at which the attendance of the general public is desired, due and adequate notice should be given. There are many methods of advertising a meeting, each having certain advantages with corresponding drawbacks. Among those commonly used are the following:—

1. Distribution of handbills.—This has the merit of cheapness. When handbills, however, are delivered from door to door they are generally unwelcome. A variety

of footprints implanted on a newly cleaned doorstep, unfastened gates, and a letter-box stuffed with unwanted matter are not unusual results which follow from the distribution of handbills, and therefore they are unbeloved by the average householder. Further, a large proportion of such handbills is never read.

2. Bill-posting.—This is an admirable method, provided the stations on which the bills are displayed are in prominent and good positions. But often these stations surround plots ripe for building, and therefore somewhat out of the way, or the stations are contiguous to buildings in course of demolition or erection. In such cases the superstitious often take pains to avoid the ladders, and the cautious the chance of meeting a falling brick or other débris, and consequently fail to read the notices there displayed.

“Fly-posting” is very effective, but an intolerable nuisance to those whose walls are adorned in this way. One of the best methods is to advertise on railway stations or the approaches thereto, the departure platforms of unpunctual railways being preferable.

3. Newspaper advertisement.—The most effective medium of advertising is undoubtedly the newspaper, provided sufficient space is taken to make a proper display.

There is no doubt that when the results and effect of advertising in newspapers are carefully considered it is by far the cheapest method. The publicity which comes from advertising in a newspaper is unrivalled. The local paper is generally thoroughly read and its advertisements scanned—sometimes for interest, at others for profit, and not infrequently for amusement.

Economy in space means an ineffective display; a useful advertisement should aim at drawing the attention of even the casual reader.

It is obvious that with the multiplicity of meetings the local newspaper cannot insert reports of all, but there is no doubt that some preference and prominence are rightly given to the meetings which have been advertised in its columns. Further, a preliminary notice in its news columns

or diary of forthcoming events is often accorded to such meetings, which is exceedingly useful in bringing them under the notice of those who have failed to read the advertisements.

It is a mistake to confine advertisements of political meetings to the organs of the party concerned, unless they are merely demonstrations of the faithful. An advertisement in the opposition papers often ensures a report of the meeting, which reaches the eye of the unconverted person who never reads a paper or attends any meeting except those of his own political faith. Thus an opportunity is given to a large class of persons who confine themselves ordinarily to one aspect of the case to know both sides of the question.

NOTICE OF MEETINGS

The meeting may concern only an elected or selected class of people, in which case *due and adequate notice* must be given to *each member entitled to be present* in strict accordance with the standing orders or rules of the body, organisation, or society affected, and such notice must be issued by the proper officer, person, or authority. Where no definite notice is required by the rules, a reasonable notice must be given which will enable those whose duty it is to attend to have the opportunity of attending.

1. Want of notice in such cases may affect the validity of a meeting, and a notice must be given to every person entitled to attend. The omission to summon one member to a corporate meeting avoids the acts of that meeting (*R. v. Shrewsbury*, 1735, *Cas. Lee*, temp. Hardw. 147). "I am of the same opinion [*i.e.* no justification of an assault had been made out, on the ground that the meeting was not a select vestry duly assembled] . . . The question is whether the allegation that the defendants were duly assembled as a select vestry has been made out. As they were assembled not on the general day of meeting, but on a particular day and for a special purpose, they should have proved the notice, without which they could not be assembled as a vestry. The sort of notice is not material; but some

notice should have been shown, and it is admitted that one of them received none" (*Dobson v. Fussy*, 1831, 7 Bing., p. 311).

Where a person is beyond reasonable summoning distance the empty form of sending notice to him need not be gone through, and in *Young v. Ladies' Imperial Club* (1920, 36 T. L. R. 392) the Master of the Rolls was inclined to the opinion that the same rule would apply in the case of a member who was so ill as to be unable on that ground to appear; but except in these cases there is an obligation to send a notice to each member of the committee, and failure to do so renders invalid any resolutions passed by such a committee, so that a person who agreed to allow her name to appear on the list of members of a committee, but had intimated that she would be unable to attend any of the meetings, is a summonable person, and a notice must be sent to her, otherwise any resolutions of such a committee will be invalid.

A member of a committee has certain duties to perform as well as privileges to enjoy, and it may well be that a person joining a club does so on the faith of the particular member of a committee discharging the duties attaching to the office.

A public body entrusted with the performance of a public duty cannot hold an extraordinary meeting unless all the members be summoned who can be summoned, or the unsummoned members are actually present at such meeting. The proceedings at a meeting at which any individual is not present who might have been summoned and was not summoned are void, though the omission be accidental, or though the individual has given a general notice that he wishes not to be summoned (*Rex v. Langhorne*, 1836, 6 N. & M. 203).

2. Want of notice or an improper notice may nullify the acts done at a meeting of this kind.—The notice convening the meeting should contain sufficient description of the important business which the meeting is to transact, and the meeting cannot in ordinary cases go outside the business mentioned in that notice (*Longfield Parish Council v.*

Wright, 1918, 88 L. J. Ch. 119). "In my opinion what was done was wrong: first, because there was no proper notice given to a person who ought to have had notice . . . and, secondly, because another gentleman was present who ought not to have been" (*Lane v. Norman*, 1891, 66 L. T., p. 86). The object of requiring a proper notice of the purposes for which the meeting is to be held, is to enable a member to exercise his own judgment as to whether he will attend or not. A notice may be good in part and bad in part, and it is not wholly invalid because it extends to something which cannot be done at the meeting (*Cleve v. Financial Corporation*, 1873, L. R., 16 Eq. 363).

3. Insufficient notice of purpose of meeting may affect the validity of resolutions passed thereat.—

"Undoubtedly it was the intention of the Legislature in framing this Statute to provide that due information should be given to all the parishioners of the special purpose for which their attendance is required. . . . As to the second part of the resolution—the making a rate for the general expenses of the parish—we are all clearly of opinion that the notice was wholly insufficient for that purpose [*i.e.* because the notice did not clearly apprise the parishioners of the special purposes for which the meeting was called] and that the provisions of the Statute have not been complied with" (per Dr. Lushington, in *Smith v. Deighton and Billington*, 1852, 8 Moore P. C. 187). "If the circular convening that meeting had stated the specific object for which it was to be held, I do not deny that the resolution may have been within the scope of its authority" (*Lawes's Case*, 1852, 1 De G. M. & G., p. 421). In *Young v. Ladies' Imperial Club* (*ante*, p. 12) it was held that as the notice of a meeting did not state the object of the meeting with sufficient particularity it was invalid, and consequently the proceedings of that meeting were likewise invalidated. See *R. v. Corporation of Dublin* (1911, 2 Ir. R. 245); *R. v. Macdonald* (1913, 2 Ir. R. 55).

• **4. Waiver of notice.**—But if *all the members* are present without notice of a resolution, and none object to the

informality, want of notice will be excused, and the proceedings cannot afterwards be invalidated on that ground (*Machell v. Nevinson*, 1809, 11 East, 84*n*). See also in *re Oxted Motor Company*, 1921, 3 K. B. 32.

5. Notices must be fairly explicit and clear to ordinary minds.—They must be frank, open, clear, satisfactory, and free from “trickiness.” If they do not fairly disclose the purpose for which the meeting is convened, such meeting is invalid (*Kaye v. Croydon Tramways*, 1898, 1 Ch. 358). “The Court does not scrutinise these notices with a view to exercise criticism, or to find out defects, but it looks at them fairly. I think the question may be put in this form: What is the meaning which this notice would fairly carry to ordinary minds? That, I think, is a reasonable test” (*Henderson v. Bank of Australasia*, 1890, 45 Ch. D., p. 337).

6. Notice of special business should be very explicit, and give the fullest information relating to the matters for consideration or decision.—When a meeting is summoned for special business, no other business should be transacted except that of which due and adequate notice has been given, although, in general, what is known as ordinary business (if included in the agenda paper of which due notice has been given) may be transacted at any meeting of a recognised corporate body. There are generally some regulations as to the calling of special meetings, or the transaction of special business, which invariably provide that a certain time must elapse before such meeting can be held or such business transacted. In some cases special business can only be transacted at specified meetings.

7. In giving notice of a meeting it is necessary to give in detail the following particulars: place, date, day, and time of meeting. If one meeting is to be held immediately after another, it is desirable to fix the time of the second meeting when it is thought the first meeting will end, adding the alternative “or at the rising of the (previous) meeting.”

8. A member of a corporate or other body who

has properly received a notice convening a meeting thereof has a right to attend and to take part in the proceedings.—In practice there is no difficulty as to this rule, but it may well be that in the case of a limited or statutory company or meeting of creditors where the members entitled to attend may conceivably number some thousands, a serious practical difficulty might arise when a large majority desired to be present; the common law rule seems to be that all persons properly entitled to attend have the right to attend and take part in the proceedings. In *R. v. Hill* (1825, 4 B. & C. 426) the principle was laid down that in the absence of any specific day fixed by charter or law, it is essential that notice of the meeting and of the business to be transacted there should be given to all persons entitled to attend, and that it should be a reasonable notice and given at a reasonable time before the meeting.

A suggestion was made when the majority of the councillors of the borough of Poplar was committed to prison for contempt of Court, that being a majority they could carry on the business of the council. Apart from the provisions of the Local Government Act, 1933, a majority cannot validly hold a meeting unless every member is properly summoned and given an opportunity to attend. A majority cannot bind a whole corporation if a minority is deprived of its right of attending the meeting, *e.g.* by holding a meeting to which it has not reasonable access or where the place of meeting is so inconvenient or small that it is physically impossible to be present. Every corporate act must be done at a meeting properly convened, properly constituted, and properly held at the usual place of meeting at which every member has the right to attend.

9. Absence beyond reasonable summoning distance (or possibly serious illness) of a person entitled to attend a meeting is a good reason for not summoning him.—“The election being by a definite body on a day of which, till summons, the electors had no notice, they were all entitled to be specially summoned, and if there was any omission to summon any one of them, unless they all happened

to be present, or unless those not summoned were beyond summoning distance (as, for instance, abroad), there could not be a good electoral assembly, and even a unanimous election by those who did attend would be void" (*Smyth v. Darley*, 1849, 2 H. L. C. 789, at p. 803).

In *re Portuguese Copper Mines* (1889, 42 Ch. D. 160), a director of a company, on being told a meeting would be held next week, said, "I cannot be there." It was held that this could not be relied on as a waiver of his right to notice, and as no notice was sent to him the meeting was declared invalid. "Perhaps if a member were at such a distance that it would be absolutely impossible for him to attend, then the secretary might be excused from sending a notice to him and the meeting would be properly convened. Possibly the same exception might hold good when a member was so dangerously ill that he could not be moved" (*Young v. Ladies' Imperial Club*, *ante*, p. 12).

It is desirable to send notices of meetings to all members in all circumstances, even to those who may be abroad, since it enables them to be kept fully informed of what is being done at meetings of bodies of which they are members.

10. Adjourned meetings.—A meeting at common law may be adjourned to complete unfinished business, and in such cases no summons of such adjourned meeting need be given, but no fresh business which may casually arise can be transacted at this adjourned meeting unless proper notice and summons have been issued (*R. v. Grimshaw*, 1847, 11 Jur. 965).

11. Any other business.—Where notice is given of a meeting of a corporation for one particular business only, the body cannot go on to other business unless the whole body is met and it is done by consent (*R. v. Wake*, 1782, 1 Barn. K. B. 80). General business of a formal or unimportant character may be transacted without notice under the heading of *other business*, provided no one present objects. If such business involves the expenditure of money, it is probable that the persons present may be personally liable therefor should a subsequent meeting refuse to ratify their acts.

12. Notice sent but not received through neglect of member.—In *James v. Chartered Accountants (Institute)*, 1907, 98 L. T., 225, it was held that a notice posted to the registered address of a member proposed to be expelled was sufficient, though, having changed his address, he never actually received it and it had been returned through the Dead Letter Office, the member having neglected to notify his change of address.

13. Clear days' notice and Sundays.—Where the rules specified a fortnight's notice, a notice sent on the 1st of November for a meeting to be held on the 14th November was declared invalid in *Labouchere v. Wharnccliffe*, *post*, p. 64. In the absence of special provision the number of days must be "clear," *i.e.* exclusive of the day of service and the day on which the meeting is held.

"Four clear days" means days exclusive of the day of service and of meeting: *e.g.* a meeting, four clear days' notice of which was issued on the 20th inst., could not be held before the 25th inst. (*Mercantile Co. v. International Co. of Mexico*, 1893, 1 Ch. 484*n*). In *Lawford v. Davies* (1878, 4 P. D. 61) it was held that 1st July 4 a.m. to 21st July 12 noon was only twenty days; and in *R. v. Middlesex Justices* (1843, 12 L. J., M. C. 59) where the Turnpike Act, 1823, required that notice of appeal should be served within six days and the last day of the six days was a Sunday, it was held that notice on the Monday following was too late, and that the service of such notice upon a Sunday would not be a good notice. And see *R. v. Aberdare Canal Co.* (1850, 14 Q. B. 854).

The phrase "not less than twenty-one days' notice" in s. 117 (2) of the Companies' Act, 1929, means twenty-one clear days' notice, exclusive of the day of service and exclusive of the day on which the meeting is to be held. An article which provides that the day of service of a notice is to be counted in the relevant number of days must be disregarded (*re Hector Whaling, Ltd.*, 1935, 52 T. L. R. 142; *R. v. Turner*, 1910, 1 K. B. 346; *Chambers v. Smith*, 1843, 12 M. & W. 2).

Notice "at least fourteen days before the date" of a meeting of debenture holders means fourteen clear days. Where notice is by advertisement the clear days count between the issue of the advertisement (or circular) calling the meeting and the day of the meeting, and such notice is effectual even though it may not reach members until some days afterwards (*Sneath v. Valley Gold, Limited*, 1893, 1 Ch. 478). If the interval is less than fourteen clear days, the statutory defect in the resolution only affects the position of the company and its shareholders *inter se*, and does not concern creditors (*re Miller's Dale & Ashwood Dale Lime Co.*, 1885, 31 Ch. D. 211).

When the period *within* which an act or proceeding is directed does not *exceed seven days*, Sundays, Christmas Day, public feasts or fasts are not to be reckoned in the computation; but see *ex parte Simpkin* (1859, 29 L. J. M. C. 23), where Sunday was included in a two days' notice. But *seven days at least* would include Sundays, etc.; Sundays are usually included in calculating days of notice, except where there is statutory provision to the contrary (*R. v. Middlesex JJ. supra*, six days' notice). Sundays are however usually excluded in any notice for a period of less than seven days (*Municipal Corporations Act*, 1882, s. 230). Clear days means a time within which an act is to be done, *e.g.* to do an act *within* fourteen days, *i.e.* it must be done before the fourteenth day, or may mean an interval to elapse before an act can be done, *e.g.* to do an act *after* fourteen days, fourteen days must be included in the interval.

Where an act is required by Statute to be done so many days *at least* before a given event, the time must be reckoned, excluding both the day of the act and that of the event, *i.e.* excluding the day of service and the day of the meeting (*R. v. Shropshire Justices*, 1838, 8 A. & E. 173; *Norton v. Town Clerk of Salisbury*, 1846, 4 C. B. 32; *Young v. Higgon*, 1840, 6 M. & W. 49; *Blunt v. Heslop*, 1838, 8 A. & E. 577; *Peacock v. Reg.*, 1858, 27 L. J. C. P. 224). In *Lancs. & Yorks. R. Co. v. Swann* (1916, 1 K. B. 263) Sunday was excluded in a 48-hour notice.

14. Absence from meetings for a period generally

varying from six to twelve months often vacates the office held by a member of a statutory or other governing body. Special articles generally provide for this, but Table A contains no provision to this effect.

Where the words used in such an article are "if he absents himself," this means voluntary or deliberate absence, and if it can be shown that the absence is involuntary, *e.g.* illness, it cannot be said that a person had absented himself (Mack's Claim, 1900, W. N. 114). Period of absence is reckoned from the date of the first meeting which the member fails to attend (*Kershaw v. Shoreditch Borough Council*, 1906, 70 J. P. 190), and notice of intention before declaring a member in default for non-attendance must be given to him (*Richardson v. Methley School Board*, 1893, 9 T. L. R. 603). In this case it was held that a physical attendance at a meeting is necessary, *e.g.* looking in at the meeting casually and taking no part, or being present for a few minutes only out of a long meeting, does not constitute an attendance. Disqualification by absence cannot be cured by subsequent attendance (*R. v. Hunton*, 1911, 75 J. P. 335). Standing orders frequently provide that leave of absence may be given, at the discretion of the meeting, for a fixed period of time. This power should be exercised before the termination of the period of absence has elapsed which ordinarily vacates office. Disqualification by absence from meetings of a board or council is not usually cured by presence at committee meetings thereof during the disqualifying period.

CHAPTER III

THE CHAIRMAN

"It's the chair as is speaking," said Mr. Gape, who had a true Englishman's notion that the chair itself could not be called to order.—*Orley Farm*, by ANTHONY TROLLOPE.

CHAIRMAN : "You are out of order, Sir !"

MEMBER : "I beg your pardon, Mr. Chairman, I never felt better in my life !!"

At the Metropolitan *Asylums* Board, Jan. 4th, 1922.

QUALIFICATIONS OF A CHAIRMAN

THE ideal chairman should be a man of infinite tact and patience, possess a judicial mind, be able to command the respect of the meeting, be absolutely impartial in his rulings—never allowing the latter to be questioned—and always ready and resourceful when difficulties arise. He should be firm yet courteous, able to govern men, not allow himself to be carried away by party or other feelings, able to endure bores cheerfully and circumvent mere obstructionists skilfully.

A chairman should possess a calm, placid temperament, have a proper sense of the dignity of his position, not be garrulous, and be accustomed to rule without fussiness, hauteur, or bullying. A remarkable feat by a woman was recorded in the Press in 1926. This lady, who was not only single but singular, had the unique record of being in the chair of a committee for some eight years without having spoken for more than half an hour in the aggregate during the whole of her term of office. She was rightly regarded by the members of this committee as an ideal chairman, and her example might be followed with advantage by other chairmen.

A good chairman should be able to govern a meeting with genial domination and be a benevolent autocrat—not overbearing or brusque in manner, but determined in a quiet way to have the business of the meeting transacted

in an orderly and expeditious fashion. He should have a wide knowledge of men, and some acquaintance with the subject under discussion. He should remember that men at meetings are often but children of a larger (sometimes not much larger) growth, and should combat their petulance, unreasonableness, and pettiness by common sense, sweet reasonableness, and quiet determination. He must believe in himself, but not allow his masterfulness to obtrude too much. A chairman should have some strength of character; hearing and seeing all things, but conveniently and quietly ignoring at times those matters which might better have been left unsaid or not done.

Occasionally he may be subjected to rude or personal remarks; if these are unjust, it is generally well to leave them unnoticed. On the other hand, should there be some cause for such ill-natured criticism, he might change his manner or tactics. Nothing impresses a meeting so much as strict impartiality—especially the minority, the strength of whose opposition is often in inverse ratio to their numbers.

Above all, he should not lean over-much to the popular side; a little judicious praise or approbation of the other side will tend to disarm and counteract the suspicious and quell the incipient disorder of the opposition. At all events he should never allow the unpopular side to feel that “minorities must suffer.” In short, he must get his own way in the conduct of the meeting, and get it—if he can—peacefully and without friction, making it appear that his will and that of the meeting are one and the same.

It is a good discipline for a cantankerous and voluble person to be in the chair for a period, but it may result in proving a greater burden than his long-suffering fellow members ever dreamt of.

APPOINTMENT

There must be a chairman. If a person is present who has been previously elected chairman or has a common law or statutory right to take the chair, that person must take the chair. If such a person is not present, the election of a

chairman is necessary, and it is desirable in such cases that a temporary chairman, who is not a candidate for the chairmanship, should be chosen, merely for the purpose of electing the chairman.

The chairman in many instances is elected for a particular meeting, or annually, or for a fixed period of time, and sometimes for life. There is usually nothing to prevent a person proposing or seconding himself as chairman, though this course is undesirable; in any event, he is entitled to vote for himself.

Often there is a deputy-chairman—designated vice-chairman, or vice-president—who takes the chair in the absence of the regular chairman at the appointed time.

Should both chairman and vice-chairman be absent, it is open to the members present to elect one of their number to the vacancy, who will retain his position even if the laggard chairman or vice-chairman turns up afterwards. Usually, however, the ordinary chairman is allowed a few minutes' grace before another member is elected to the chair. As a matter of courtesy, though not of right, the chairman thus appointed often gives way to the regular chairman by vacating the chair, which operates as a virtual resignation.

A chairman should always be punctual and regular in his attendance, and whenever possible should send notice to the meeting when he is likely to be absent or unavoidably late.

In the case of meetings of creditors, the largest creditor is generally voted to the chair. In specially convened meetings, where there is no regular chairman: *e.g.* political demonstrations, religious and social gatherings—it is usually the custom for the conveners to select their own chairman beforehand, and to announce his name on the notice or advertisement of the meeting.

The opening remarks of the chairman should be brief and to the point—tempered with discretion and wit. He should direct and control rather than lead a meeting.

How elected.—It is desirable that the chairman should as a rule be elected without opposition, by a simple motion,

e.g. "I move that Mr. X. Y. Z. take the chair." In any case, he must be duly proposed and usually, but not necessarily, seconded, and if there is more than one candidate, the decision of the meeting should be taken either by show of hands or (rarely) by poll. The actual putting of the motion for the election of a chairman to the vote is generally done by the proposer or secretary, but it is much better for a temporary chairman to be appointed, especially when there is a contested election.

A person must not preside at his own election or reelection, since "a man is not to be a judge in his own cause" (*R. v. Owens*, 1858, 28 L. J. Q. B., at p. 318). "There is no more sacred maxim of our law than that no man shall be a judge in his own cause, and such force has that maxim that interest constitutes a legal incapacity to a person being a judge in every case . . . it is impossible for a Court of Law to allow him to exercise the function of presiding at that election of which he could influence the result" (*Fanagan v. Kernan*, 1881, L. R., Ir., 8 C. P., at pp. 48, 49). "No man can preside at his own election and return himself" (*R. v. White*, 1867, L. R., 2 Q. B., at p. 561).

Objection to appointment of chairman.—Any objection to the nomination of a chairman should be made there and then. "It is alleged that there was an irregularity in nominating the chairman; but it appears on a balance of the evidence that he was nominated and seconded. However, Mr. Bluck took the chair, and the meeting acquiesced and adopted him as chairman. In that capacity he was bound to declare, according to his means of knowledge, the sense of the meeting—that is the duty of the chairman; and if it is alleged that he intentionally misrepresented the numbers, that is a fact which ought to be made out by the clearest evidence" (*Cornwall v. Woods*, 1846, 4 No. of Cas., p. 559).

Assuming that his appointment is regular and in order, the newly-elected chairman then takes the chair and briefly thanks the meeting for the honour conferred on him.

DUTIES AND POWERS

The chairman should be well acquainted with the statutory rules, standing orders,* or regulations of the body over which he is presiding, not unduly straining their interpretation, but rather sacrificing the letter to the spirit. His decisions must be governed and controlled by the statutory rules, standing orders, or regulations.

The chairman is an integral part of a meeting, and apart from statute or standing orders his primary duties and functions are :—

1. “*To preserve order ; and*
2. “*To take care that the proceedings are conducted in a proper manner ; and*
3. “*That the sense of the meeting is properly ascertained with regard to any question which is properly before the meeting*” (National Dwellings Society v. Sykes, 1894, 3 Ch. 159).

The nature and extent of the power and duty of maintaining order cannot be very closely defined *à priori*, and must necessarily arise out of, and in character and extent depend upon, the events and emergencies which may from time to time arise. “It is no doubt the duty of the chairman of a meeting where a large body of people are gathered together to do his best to preserve order, and it is equally the duty of those who are acting as stewards or managers to assist him in so doing” (Lucas v. Mason, 1874, L. R. 10 Ex. 251). If the chairman authorises or directs expulsion and unreasonable force is used, he may be liable in damages for any injury sustained. Before ordering the removal of a disorderly person it may be desirable, if possible, to take the opinion of the meeting as to whether a member should be expelled.

The chairman is not necessarily *functus officio* when he has declared the results of the voting (see Hickman v. Kent Sheepbreeders, 1920, 36 T. L. R. 528 ; and Cornwall v. Woods, 1846, 4 No. of Cas., at p. 560). Before declaring that a motion is lost or carried a chairman has a right to have a recount if he is uncertain who had voted for or against

* In Part I, rules, regulations, standing orders, etc., governing meetings will usually be referred to as “standing orders.”

the motion. The correct view from Hickman's case (*post*, p. 65) appears to be that he is *functus officio*, where this recount after the first declaration is not *bonâ fide*, i.e. in such circumstances his first declaration must stand. The chairman should not, it is thought, give his first or original vote after he has ascertained the number for or against the motion; he can then only give his casting vote if he is entitled to a casting vote. This first vote can be properly given only at the same time when the other members vote. It is somewhat irregular for anyone to vote at all after the result is known, even though the chairman has not made his formal declaration.

If the chairman leaves the meeting before the business is completed, apparently any business done after his departure is void (*R. v. Buller*, 1807, 8 East 389), but the appointment of another qualified person to occupy the chair would make this later business valid. In *R. v. Winchester* (1806, 7 East 573), where there was no regular presiding officer at an election, it was held that the control thereof devolves at common law upon the electors themselves.

1. Duties

- i. To see that the meeting is properly convened in accordance with the rules and properly constituted—i.e. that the notice was issued by the proper authority; that there is a quorum of members present; and that his own appointment is regular and in order.
- ii. To take care that all the requirements, whether of statutory rules, standing orders, or regulations, are duly observed.
- iii. To see that the items of business are taken in the order set out in the agenda paper, unless that order is altered with the consent of the meeting.
- iv. To take care that due and sufficient opportunity is given to those who wish to speak (and particularly the minority) to express their views on the subject under debate or discussion. (Speakers should be called on by name.)

- v. To allow no discussion unless there is some motion before the meeting.
- vi. To prevent irrelevant discussion, and forbid a second speech on the same motion except in the case of the proposer, who usually has a right of reply.
- vii. To take the sense of the meeting by putting the motions and amendments in proper form. Voting should be by show of hands in the first place, and, if demanded, a poll should be taken. "The right to demand a poll being, therefore, as it appears to us, by the Common Law, an incident to the popular election of a person to an office, we think the electors cannot be deprived of it without a special custom of election inconsistent with such right or expressly excluding it by negative terms—viz. that no such right exists in the particular parish" (*Campbell v. Maund*, 1836, 5 A. & E., p. 880).
- viii. The chairman has no right to prevent discussion upon a matter which is included in the notice convening a meeting.

2. Powers

"There is not, as far as I know, any case which has ever arisen to guide us in deciding how far the powers of a chairman extend. . . . Public meetings must be regulated somehow; and where a number of persons assemble and put a man in the chair they devolve on him, by agreement, the conduct of that body. They *attorn* to him, as it were, and give him the whole power of regulating themselves individually. This is within reasonable bounds. The chairman collects, as it were, his authority from the meeting" (*Taylor v. Nesfield*; *Wills on Vestries*, p. 29n).

1. "To decide all emergent questions which necessarily require decision at the time" (*re Indian Zoedone Co.*, 1884, 26 Ch. D., at p. 77). In the exercise of his authority, the chairman must act *bonâ fide*, and in the best interests of the meeting. His decisions, even when not strictly correct,

will be upheld by the Court, unless there is evidence that some substantial injustice has arisen therefrom.

In *ex parte* Mawby (1854, 3 E. & B. 718), where a chairman of a vestry meeting rejected votes which were admissible, but such rejection caused no difference in the result, the Court declined to interfere; and in *Shaw v. Thompson* (1876, 3 Ch. D. 233), though the Court held that the conduct of the chairman was erroneous and illegal, it refused to declare the election null and void, on the ground that there was no evidence that the poll was improperly conducted or that any voter was prevented from recording his vote.

2. To adjourn the meeting when, and only when, it is impossible to maintain order.

It is said that at Common Law a chairman has power to adjourn a meeting, but the apparent authority therefor (*R. v. D'Oyly*, 1840, 12 Ad. & E. 139) clearly shows that the power of the chairman to adjourn was limited for the express purpose of taking a poll. In *R. v. Wimbledon Local Board*, 1882, 8 Q. B. D., at p. 463, Brett, L. J., asked the question: "Cannot a *meeting* be adjourned at Common Law?" The power of adjournment, apart from regulations, seems to rest entirely with the meeting, *i.e.* a majority of those present, and not with the chairman, but such power must be exercised *bonâ fide*, and in the best interests of the meeting. It is, however, doubtful whether a meeting apart from standing orders can adjourn itself unless the business for which it has been convened has been completed, unless the meeting is unanimous. If a meeting has power to adjourn itself, a majority is sufficient for the exercise of that power (see *National Dwellings Society v. Sykes*, 1894, 3 Ch. 159).

3. To remove or order the removal of all disorderly persons, including those who have a right or an interest entitling them to be present.

If a member refuses to obey the chair when his attention has been drawn to a breach of the rules, standing orders, etc., he should be asked by the chairman to withdraw from the meeting, preferably by motion of the meeting. If he fails to withdraw within a reasonable time, he may be removed

by the exercise of reasonable force, but before taking extreme measures the chairman should generally take the sense of the meeting. If he resists and uses violence or commits a breach of the peace, he may have to answer for his conduct either civilly or criminally (*Doyle v. Falconer*, 1866, L. R. 1 P. C. 328). A chairman may order any member who is guilty of persistent disorder to withdraw, and may also order a stranger, whether disorderly or not, to leave the meeting. On failure to leave, the member or stranger may be ejected with such reasonable force as may be necessary. See *Howell v. Jackson* (1834, 6 C. & P. 725), where it was held that a landlord may turn out a man from a public-house who is disorderly, though such disorder does not amount to a breach of the peace.

It is an offence for a person who is disorderly at a meeting to refuse to give his name and address when requested by the chairman to do so (Public Order Act, 1936, s. 6).

4. To maintain his ruling on points of procedure.

5. Generally to conduct the meeting so that the business thereof may be facilitated and the results clearly and well defined.

3. The Casting Vote and Power to Adjourn

Unless there is some provision in the standing orders or rules, the chairman—

(i) Has no casting vote, *i.e.* vote that turns the scale.

A chairman has no second or casting vote at common law. This privilege can be conferred, either by the articles of a joint stock company, or by the by-laws, standing orders or regulations which govern the meeting. The chairman is not bound to give his casting vote, but may adopt the practice of the House of Lords, where, when an equality of votes is recorded, the motion is deemed to be not carried, *i.e.* in effect negatived; in the House of Commons, on the other hand, the Speaker or Chairman must give a casting vote.

The chairman at common law has therefore only one vote, that is, he is in the same position

as an ordinary member. Where a chairman has a second or casting vote, if he intends to exercise both his votes he should give his first vote while the vote of the other members is being taken and before the tendency of the votes is visible. It would be an unwarrantable stretch of his authority if a chairman reserved his votes and gave, if the numbers proved uneven, *i.e.* eight Ayes and seven Noes, first to the Noes his vote as member, and then his casting vote as chairman. It is not usually desirable for a chairman who wishes to maintain a reputation for impartiality to exercise his casting vote, as he is thereby bringing into being something which exactly one-half of those voting is opposed to. A chairman has only a casting vote if there is an *equality of votes*, which means an equality of valid votes. He may exercise his ordinary vote one way and his casting vote another, but he may decline to vote at all, and, in case of equality of votes, if he declines to vote, the motion is lost. He may give a contingent or hypothetical casting vote, to come into operation if, in the course of subsequent proceedings, it should appear that there has been an equality of valid votes (*Bland v. Buchanan*, 1901, 2 K. B. 75, see also *post*, p. 65) ;

- and (ii) Has no right to adjourn the meeting without the consent of the members present, unless the business for which it was convened has been done. "In my opinion the power which has been contended for is not within the scope of the authority of the chairman—namely, to stop the meeting at his own will and pleasure. The meeting is called for the particular purposes of the company. According to the constitution of the company, a certain officer has to preside. He presides with reference to the business which is there to be transacted. In my opinion he cannot say after that business has been opened, 'I will have no more to do with it; I will not let this meeting proceed ;

I will stop it ; I declare the meeting dissolved ; and I leave the chair.' In my opinion that is not within his power. The meeting by itself can resolve to go on with the business for which it has been convened, and appoint a chairman to conduct the business which the other chairman, forgetful of his duty or violating his duty, has tried to stop because the proceedings have taken a turn which he himself does not like " (National Dwellings Society *v.* Sykes, 1894, 3 Ch. 159) ; and see *post*, p. 187.

A chairman is unwise to adjourn improperly a meeting, even if supported by a majority, since it may result in the minority validly carrying on the business of the meeting, provided it is sufficient to constitute a quorum (see *Catesby, v. Burnett*, 1916, 2 Ch. 325).

CHAPTER IV

THE GENERAL CONDUCT OF A MEETING

I. Religious, social, or political demonstrations, or meetings held for propaganda work.

Generally, such meetings require and demand some organisation, much forethought and arrangement, considerable discretion and tact, and plenty of hard work. A small active and working committee with secretary and treasurer should be appointed to arrange preliminaries and to ensure an orderly, successful, and well-planned demonstration.

Great attention must be paid to detail, and every endeavour should be made to avoid those hitches which not only tend to upset the equanimity of the speakers, but too often provide ample opportunities to the scoffer and facetious for ridicule and banter.

The platform should be carefully planned—one person, one reserved seat; a few spare seats are always useful in case of unexpected visitors. The supporters of the chairman should know the position of their seats, some person being appointed to see that they get them. The unseemly jostling and shuffling of seats on the platform often mars the opening of a meeting, and disturbs the temper and equanimity of the faithful.

It is usual for the majority of the occupants of the platform to take their seats some ten minutes before the opening of the proceedings; the chairman, the speaker or speakers on the occasion, with the more prominent persons following on just before the appointed time of the meeting, with or without musical honours.

The bearing or want of it of those on the platform is sedulously noted by the audience; it is so easy to excite ridicule and unnecessary comment, and somewhat difficult to remove even an erroneous impression. This applies with greatest force to those occupants of the platform who are present before the meeting actually begins—music will however tend to distract the too critical attention of the

waiting hearers. If the eye and the ear of the audience are not displeased, it is likely to be in a more receptive and impressionable mood. In any case, the chief speaker should be accorded a rousing reception or welcomed with an ovation of some sort, which should be spontaneous—apparently or really. If there is any music, it should be continued until all the platform occupants are comfortably settled.

It is essential that some definite and distinct arrangement should be made as to the length of the musical items, and some sign of sympathetic communication with the organist or conductor as to cessation of music agreed upon. Too frequently, an agitated and perspiring secretary is seen gesticulating in a frantic manner to an absorbed and oblivious organist or conductor to cease operations, causing some amusement to the audience and much consternation to the platform, all of which could be avoided by a little foresight and arrangement.

Again, the meeting should always begin at the advertised time, otherwise there may be shouts of "Time," or other signs of incipient disorder. And it is most important that the audience should be in a good humour at the opening of the meeting at any rate, as their patience may be sorely tried later on.

The chairman on rising should open the meeting with a few remarks merely by way of introduction as to the purport of the meeting or the chief speakers. He should remember that "brevity is the body as well as the soul of wit," and modify his speech accordingly. When the loquacious chairman is told to "sit down" he should, while blandly ignoring the interruption, take an early opportunity of resuming his seat.

The order of the meeting should proceed exactly as pre-arranged, the speeches being few and none of them long, except that of the principal speaker. At such meetings there is no obligation on the part of the chairman to allow anyone to speak, or to ask questions. The speakers and procedure are determined by the chairman and the conveners of the meeting.

Resolutions which are generally put to the vote at such meetings comprise—

1. Declaration of principles or policy.
2. Resolutions embodying such principles or policy to be sent to some authority or persons.
3. Votes of thanks to principal speaker and chairman.

II. Meetings of statutory authorities (e.g. county, borough, district, and parish councils), other public bodies, and also meetings of religious, political, or social societies to which an elected or selected class of persons is invited.

Such meetings—where the general public is excluded, or, if allowed to be present, have no right to take any part in the proceedings—should be governed by by-laws, standing orders, or set rules. The nature of the rules depends upon the character and permanence of the body holding the meetings, but they should be clear, explicit, and free from any ambiguity. Any rules, however imperfect, are better than none. They should be fair and reasonable, and interpreted in an impartial manner. From them the chairman obtains most of his power, and, if properly drawn up, they form an invaluable authority to which the chairman can appeal. But the chairman must know the rules and understand their purport and meaning, otherwise it may lead to unnecessary conflict with members of the meeting.

Standing orders are rules and forms which regulate the procedure of deliberative or legislative bodies. Each House of Parliament has its own. Standing orders are of equal force in every Parliament, except so far as they are altered or suspended from time to time. By this name are also known the rules which local authorities make for the regulating of their proceedings and business, and these are permanent regulations which cannot usually be varied or abrogated without notice of definite character, *e.g.* six months. Any member may direct attention to a breach of them.

Usually some provision is made for the suspension of

standing orders for urgent or special purposes. Statutes or standing orders which limit or extend common law rights, *e.g.* those which modify the rules of meetings, must be expressed in clear and unambiguous language (*Ash v. Abdy*, 1678, 3 Swan. 664).

Where there are no standing orders or where standing orders are inadequate, then either the practice of the House of Commons or the usual practice of the authority may be followed.

Rules should safeguard the general rights of the members of the meeting, and should not endeavour to crush the rights of minorities. When once agreed to, any alteration thereof should be made only after due, adequate, and sufficient notice has been given to the members concerned—in fact, there should be a standing rule that any such alteration should require notice of a definite length or should take place only at certain meetings.

Standing orders are of great assistance to chairman, members, and officials alike; they prevent misapprehension of the powers of the meeting, avoid confusion and disorder, and facilitate the dispatch and conduct of business.

Some societies adopt the rules of the House of Commons, *mutatis mutandis*, but these are somewhat complex and unworkable for ordinary meetings. "It appears to me that meetings of this kind are not bound to model all their proceedings on the rules of the House of Commons. Those rules are very useful; they are the result of long experience, and when those rules are understood they work out admirably. But they are too complex for the apprehension of ordinary shareholders. . . . I think the chairman is not to be caught suddenly by an expression of opinion, when he, without very much experience (of course, I am speaking of chairmen in general, not of this chairman), on the spur of the moment, has to come to some conclusion upon some proposal before the meeting; and I am prepared to hold—and do hold—that he is allowed to express his opinion in a deliberative way" (*Henderson v. Bank of Australasia*, 1890, 45 Ch. D., p. 339). But it is not necessary that a member should formally dispute the chairman's decision thus given in order to entitle him to

impeach afterwards the validity of such ruling. The chairman *should know his business*, and if he improperly deprives a member of a right to which he is legally entitled, the validity of the proceedings may be afterwards impeached.

Meetings which are open to members of an elected or selected class may be classified as follows :—

1. The parent meeting where formal business is transacted is governed generally by some regular procedure in its proceedings. It is generally distinguished by a particular name—*e.g.* council, society, board, or governing body. It is the ultimate authority for all the business transacted. Unless there is an expressed or statutory delegation of authority (*e.g.* the Education Committee of the London County Council, or a watch committee of a borough) no reports or resolutions of delegated bodies are binding until they have been confirmed by the parent body. The real business is usually delegated to—
2. Committees (of which the chairman of the appointing body should be a member), each committee having some specified work to do—*e.g.* finance, highway, education, law, and parliamentary. In committee the proceedings are less formal, and discussion tends rather to elucidate the opinions of the members, and so to form some *consensus ad idem*, rather than to be directed at the long-suffering reporter as in a public meeting. The powers of committees should be clearly set forth in their appointment. They report to their appointing body, and their wishes take the form of recommendations, which, if adopted by that body, are termed resolutions.
3. In turn, the committee may appoint sub-committees to deal with some specific branch of their work. The latter would report their recommendations to their appointing committees.

When a committee or sub-committee is appointed with

full power to act, the appointing body, it is suggested, may not revoke any such power in relation to any act which under that power has been done ; but see *Huth v. Clarke* (*ante*, p. 5) as to the right of the appointing authority to resume delegated powers.

CHAPTER V

REGULATIONS GOVERNING MEETINGS

QUORUM, ADJOURNMENTS, AND POSTPONEMENTS

STANDING Orders, By-laws, or Rules should, *inter alia*, contain some or full regulations as to the following :—

1. Place, day, and time of meeting, and provision as to the convening of special meetings.
2. Constitution of quorum.
3. Appointment of chairman or president, and deputy.
4. Powers of chairman—in particular whether he has a second or casting vote, and as to his power of adjournment, with or without the consent of the meeting. Statute sometimes gives certain powers to the chairman. The chairman should have power to decide points of order and priority of speakers ; and his decision should be final.
5. The order in which business (*i.e.* as set forth on the agenda paper) is to be transacted : *e.g.*—
 - (1) Reading the notice of the meeting. This seems unnecessary, but is usual, see *post*, p. 194.
 - (2) Minutes and their confirmation.
 - (3) Correspondence.
 - (4) Reports of committees and/or officers.
 - (5) Finance.
 - (6) Motions for debate (if proper notice has been given) in the order in which they appear on the agenda paper.
6. Conduct of debate.
 - (1) Speaker to stand and address the chair except when in committee.
 - (2) Length of speeches. If a time limit is set for speeches, provision should be made for an extension of such time with the special permission of the meeting.
 - (3) No second speech to be allowed on the same

question, unless by way of explanation, which must not introduce a new topic—this power to be left to the discretion of the chairman.

- (4) Irrelevancy or improper language. The chairman should have power to deal with these by, *e.g.* directing the offending member to resume his seat.

- (5) Disorder.

7. Order in debate.

- (1) Motions and amendments thereto: notice and withdrawal.
(2) How motions may be properly interrupted (see *post*, p. 55).

8. Voting.

- (1) Voice.
(2) Show of hands.
(3) Division.
(4) Poll: how and when to be demanded, and regulations as to taking a poll.

9. Appointment of committees and their powers.

10. Adjournments of debate or meetings.

11. Rescission of resolutions, stating requisite time and notice.

12. Suspension of standing orders or rules.

13. How and when standing orders or rules may be altered.

14. Definition of duties of the secretary and/or other officers. Questions to officials: how regulated.

Where Statute, Common Law, or standing orders do not make sufficient provision for any matter, a meeting of a corporate or other body should generally be guided either by the practice of the House of Commons or by the previous practice of the meeting.

SUSPENSION OF STANDING ORDERS

Standing orders usually contain provision for their suspension in special circumstances, and this generally

requires a certain specified majority of the members present. Apart from any regulation, standing orders should not be suspended except by the unanimous consent of all present, definitely given and recorded in the minutes.

QUORUM

A quorum (L., *lit.* of whom), from the wording of commissions in which certain persons were specially designated as members of a body by the words *quorum vos . . . unum (duos, etc.) esse volumus*, "of whom we will that you be one" (two, etc.), is the fixed number of members of any body or society whose presence is necessary for the proper or valid transaction of business. Unless specially provided, persons represented by proxy cannot be counted as present in forming a quorum. If the regulations prescribe a quorum, no less number can do business (*Howbeach Coal Co. v. Teague*, 1860, 5 H. & N. 151), and in considering whether the requisite number of persons is present only those members must be included who are competent to take part in the particular business before the meeting. See *post*, p. 42, as to constitution of quorum.

As to resolutions not passed at a meeting, see *re George Newman & Co.*, *post*, p. 189; *Baroness Wenlock v. River Dee Co.* *post*, p. 189.

Any business transacted when no quorum is present is invalid (*re Romford Canal Co.*, 1883, 24 Ch. D. 85), and, if the standing orders, by-laws, or rules do not provide for a quorum, two persons will usually form a meeting (*Sharp v. Dawes*, 1876, 2 Q. B. D., p. 29). Public bodies acting under the law charged with the performance of public duties, where the statutes or standing orders do not provide for a quorum, cannot begin until a quorum is present (see *post*, p. 42), but a quorum having once been constituted it is occasionally the practice, when the business of the meeting has once been properly started, to continue it unless some member objects and calls the attention of the chairman to the absence of a quorum, as is done in the House of Commons. In such circumstances the chairman would make a count, and if there was then no quorum the meeting would stand adjourned.

The better practice is never to allow any business to be transacted in the absence of a quorum. As to local authorities, see Local Government Act, 1933, Schedule III, Part V, 1 (1).

In calculating a quorum of creditors present at a first meeting in bankruptcy, only those who have lodged proofs can be included; consequently, if there is only one creditor who has lodged a proof and he is present, he forms a quorum and constitutes a meeting (*re Thomas, ex parte Warner*, 1911, 55 S. J. 482; see also *East v. Bennett Bros.*, *post*, p. 191, and *Barron v. Potter*, *post*, p. 132); also one person can by the appointing body be constituted a committee.

The former Board of Agriculture, which technically consisted of the Lord President of the Council, the Secretaries of State, the Lord Privy Seal, the Chancellor of the Exchequer, and a President, was said to "meet" when one person attended. The President of the Board in November, 1911, stated in the House of Commons that the quorum of a meeting of the Board consisted of one person.

Absence of quorum.—It is not competent in the absence of a quorum for the members of a meeting which has previously been duly constituted to perform ministerial acts, unless such acts have been previously authorised by the corporate or other body concerned, *e.g.* signing cheques after payment of the accounts has been duly authorised. In actual practice, where urgency demands or seems to demand, action is frequently taken without specific authority, but confirmation or ratification should always subsequently be obtained. This practice is, however, much to be deprecated.

Meeting must be properly constituted.—No business can be validly transacted if the minority, however small, is prevented by the majority from attending, *i.e.* the meeting must be open to all the members without restrictions or conditions of any kind. Hence, if a company is unable to accommodate members summoned to a meeting the majority is not validly constituted.

ADJOURNMENTS OF MEETINGS

The chairman has no power to adjourn a meeting, unless with the consent of the members present, apart from express provision, or when the business for which it has been convened has been transacted. The chairman may, however, adjourn any meeting which is so disorderly that no business can be transacted thereat. It is well, therefore, to give the chairman specific power to adjourn a meeting at his discretion either for a short period or in the interests of order (see *ante*, p. 27).

A chairman has no right to adjourn a meeting against the expressed wish of the members present, so as to prevent them proceeding to the transaction of the business for which they have been called together (see *ante*, p. 29), although *R. v. D'Oyly* (1840, 12 A. & E., 139) goes to show that a statutory chairman may adjourn for a subsidiary purpose, as for taking a poll, or where the meeting is so poorly attended as not to be representative of the general body.

"If they be an assembly, all consisting of equals, and there be no custom or rule of law to direct the adjournment, the right must be in the persons which constitute the assembly" (*Stoughton v. Reynolds*, 1736, 2 Strange, p. 1046; *Shaw v. Thompson*, 1876, 3 Ch. D. 233). "The case of *Stoughton v. Reynolds* (*ante*) did not at all turn upon the right to *preside* but upon the right of the chairman to *adjourn*. The question of adjournment should have been decided, as it generally is, by vote and not by the chairman" (*Wilson v. M'Math*, 1819, 3 B. & Ald., at p. 247).

In *R. v. Archdeacon of Chester* (1834, 1 A. & E. 342) notice was given that if a poll was demanded at an election the meeting would adjourn from the church to the town hall, and upon a show of hands a poll was demanded; the chairman, without taking the sense of the meeting, adjourned the election to the town hall, where a poll was taken. It was held that this was not an adjournment of the business of the meeting, as in *Stoughton v. Reynolds*, and as no business was interrupted by it, the adjournment was in order.

An adjournment may arise in four ways :—

1. Failure to make a meeting—*i.e.* quorum of members not present ; although this is strictly a postponement. A meeting cannot be adjourned if there was in fact no meeting. The rules, by-laws, or regulations of almost every corporate body provide for adjournment *ipso facto* to a certain fixed date if a quorum is not present within a certain time.
2. Failure to keep a meeting—*i.e.* a count out.
3. Adoption of motion for adjournment.
4. Action of chairman.

POSTPONEMENT OF MEETINGS

A properly convened meeting should not be postponed. The proper course to adopt is to hold the meeting as originally intended, and then and there adjourn it to a more suitable date. If this course be not adopted, there is a danger of certain members ignoring the notice of postponement, and, if sufficient to form a quorum, holding the meeting as originally convened and validly transacting the business thereat (see *Catesby v. Burnett, post*, p. 221).

In certain cases it might be within the powers or province of the chairman or president of the meeting to postpone it ; at the same time it is desirable that such postponement should be with the consent of the members generally present. In all cases, notice of postponement should be sent to all who received the original notice to attend.

QUORUM WHERE NO PROVISION THEREFOR IS MADE

The acts of a corporation, other than a trading corporation, are those of the major part of the corporators, corporately assembled. In the absence of any express regulation or special custom, the major part must be present at the meeting, and of that major part there must be a majority in favour of the act done or resolution passed (*Merchants of the Staple of England v. Bank of England*,

CHAPTER VIII

AMENDMENTS. FORMAL MOTIONS. VOTING

AMENDMENTS

DISCUSSION is usually brought into being by a motion (commonly but erroneously called a resolution) being proposed and seconded, where it is the practice or the rules provide that motions should be seconded.

Unless standing orders require, ordinary amendments (and this also applies to formal motions, *e.g.* To move the previous question) can be moved without previous notice, provided they are relevant to the motion and not outside the scope of the notice convening the meeting, and do not involve such a substantial alteration of the motion as to make it a new motion.

When a motion has been duly moved and seconded, discussion thereon may be interrupted by some or all of the following further motions :—

1. To amend the motion [Amendments].
2. To move the previous question [That the question be *not* now put].
3. To proceed to the next business.
4. To move the closure [That the question be now put].
5. To postpone the consideration of the question *sine die*, or to a fixed date.
6. To adjourn the debate.
7. To adjourn the meeting.
8. To defer consideration to a further meeting, or, if dealing with a recommendation of a committee, to refer it back for further consideration and report.

Amendments are generally of four kinds :—

1. To omit certain words.
2. To omit certain words and insert or add others.
3. To insert certain words.
4. To add certain words.

Suppose the following motion has been duly moved and seconded : " That, having regard to the additional duties of the secretary, his salary be increased from £250 to £275 per annum as from the 1st of January, 1939," the following amendments may then be moved :—

1. To omit the word " additional."
2. To omit " £275 " and insert " £300."
3. To insert the words " and experience " after " duties." (This amendment should be put to the vote before No. 2.)
4. To add the following words : " provided a dividend of not less than 10 per cent. be paid for the half-year ending 31st August, 1939."

Presuming each amendment in turn has been carried, the original motion, as amended, would read as follows :—

" That, having regard to the duties and experience of the secretary, his salary be increased from £250 to £300 per annum as from the 1st of January, 1939, provided a dividend of not less than 10 per cent. be paid for the half-year ending 31st August, 1939."

This should be put as a substantive motion (which need not again be proposed or seconded) to the meeting, and resolved accordingly ; if the substantive motion be not carried, no resolution is adopted. It would not, of course, be necessary to put the original motion again as a " substantive motion " unless it were altered by amendment.

Amendments are a fruitful source of trouble to the chairman, who often forgets that he collects his authority from the meeting and not from himself, unless of course articles or standing orders have given him express powers. Amendments are usually, but not necessarily, moved by minorities, and if the chairman is uncertain whether the amendment is in order, he should allow it to be moved so as to save the resolution, as failure to admit germane and relevant amendments will nullify a resolution. In *Henderson v. Bank of Australasia* (*ante*, p. 34), where the chairman's refusal to put the amendment had withdrawn a material and relevant

question from the meeting, the Court set aside the resolution passed thereat.

Chairmen sometimes refuse to admit amendments on the ground that they have not been seconded, but, unless standing orders expressly provide, the chairman has no alternative but to allow the amendment to be put. "In my opinion, if the chairman put the question *without its being either proposed or seconded by anybody*, that would be perfectly good" (*re Horbury Bridge Coal Co.*, *ante*, p. 52). Of course the mere fact of there being no seconder indicates that it is the amendment of a small minority and will therefore be lost.

AN AMENDMENT

1. Must not be a mere negative—*e.g.* that having regard to the additional duties of the secretary, his salary be *not* increased, etc.—since the same result could be obtained by voting against the original motion ;
2. Should be relevant and intelligible in relation to the original motion, and not go beyond the notice convening the meeting or beyond the scope of the business which can be transacted thereat ;
3. Should be formally moved and, according to general practice in meetings where each member has one vote only, seconded ; otherwise, if not put to the meeting, it will fall to the ground. If, however, it has actually been put to the meeting and voted on, although unseconded, it cannot be rejected simply because it had no seconder. "I think that the objection that the amendment was not seconded cannot prevail, it being admitted that it was put and voted upon" (*re Horbury Bridge Coal Co.*, 11 Ch. D., p. 117) ;

No amendment can be brought forward after the close of the poll (*R. v. Roberts*, 1863, 3 B. & S. 495).

4. Must come strictly within the scope of the notice convening the meeting, and must not commit the meeting to anything more onerous than the motion.

Amendments substantially altering the motion cannot usually be put without proper notice. "How is it possible for the Court to know how many shareholders abstained from attending the meeting, being satisfied that the arrangement, *as it was proposed*, was advantageous to them, and being quite content to exercise no voice about it?"

- (*Clinch v. Financial Corporation*, 1868, L. R., 5 Eq., at p. 481). Any amendment without notice which radically alters the motion of which notice is required is out of order, as is also any amendment which is merely obstructive or dilatory;
5. Should be in writing, clearly stating the proposed alteration, signed by the mover, and given to the chairman ;
 6. May be moved or seconded (if required by standing orders) by any member who has not already spoken on the motion ; after which all members have a right to speak ;
 7. Must not be moved after the question is put ;
 8. Gives no right of reply to the mover ;
 9. Cannot be withdrawn without the consent of the meeting ;
 10. If there is an equality of votes and the chairman does not exercise his casting vote, is deemed not carried.

No member can move more than one amendment to the same motion, unless standing orders otherwise provide. The meeting must not be asked to vote on two or more amendments at the same time. The chairman should, therefore, allow only one amendment to be before the meeting at a time. When several amendments are before the meeting, it is generally the practice to take them in the order in which they will affect the main question, and not in the order in which they were moved. It is, however, usual not to allow a second amendment until the first has been disposed of, and to avoid allowing an amendment of an amendment. If an amendment of an amendment is

allowed, it generally leads to confusion. No amendment should be allowed relating to those parts of the main question which have already been agreed to. If the amendment is not carried, the original motion remains to be further amended or discussed.

When an amendment has been put to the meeting and carried, it must be put a second time, embodied in a substantive motion, which supersedes the original motion. This substantive motion can be amended and discussed as if it were the original motion. Any amendment which so amends the substantive motion that it becomes the original motion should not be allowed. It sometimes happens that an amendment which has been carried as an amendment is lost as a substantive motion, in which case the original motion is not revived. This is a device which is used to get rid of the whole subject under discussion.

It is not essential to follow the rules of the House of Commons in dealing with amendments. The observance of strict formality in putting motions and amendments thereon to vestry meetings is unnecessary; it is enough if conflicting propositions be so put to such a meeting that those present understand what it is that they are called on to decide (*ex parte* Stevens, in *re* The Vestry of Hammersmith 1852, 16 J. P. 632).

Amendments when motion is withdrawn.—Sometimes a motion to which an amendment is proposed to be moved is withdrawn, and if it is properly withdrawn, usually with the consent of the meeting, the amendment, *ipso facto*, is withdrawn and cannot be moved as an amendment. But if the original motion could have been moved without notice, it follows that a motion incorporating the amendment can be moved independently as a new motion.

FORMAL MOTIONS

1. To move the previous question.—When the main question, but not an amendment thereto, is under discussion, it is competent for any member who has not spoken on the main question to move the "Previous Question," in order

to get rid of a motion which is considered inconvenient or on which it is thought unwise for any decision to be taken. If duly seconded, discussion may follow. The previous question takes precedence of all amendments, and may take the form of "That the question be now put"; in which case the supporters of the "Previous Question" (which is a device for shelving the matter for the time being) vote *against* it, and if successful the main question is got rid of as regards that meeting. The more general way of putting the previous question is in the form: "That the question be not now put." If this motion is not carried, the main question is then put to the vote at once without further discussion. On the other hand, if it is carried, the main question cannot be put at that meeting, though it may be brought up at a subsequent meeting. The object of the previous question is to avoid the putting of the original resolution to the vote by considering whether or not the original resolution shall be put to the vote at all. No amendment may be moved to the "Previous Question," though it may be superseded by a motion for adjourning the meeting.

2. To proceed to the next business.—This motion, which has the same effect and object as the "Previous Question," *i.e.* to prevent a decision being obtained on the motion under discussion, may generally be moved at the close of any speech, and, if seconded, is put forthwith without speech or debate. If carried, the subject under discussion drops; if lost, there is generally a limit of time—*e.g.* half an hour—before this motion can be moved again concerning the same subject of debate.

3. The closure,* familiarly called "the gag," is generally moved in the form: "That the question be now put." This is moved and put in the same way as the preceding motion. If carried, the motion under discussion is put to the vote. The object of this motion may be either to burke discussion or to get a decision on a question which has been reasonably or sufficiently debated. "As to the closure, I think that if we laid down that the chairman, supported

* For full note on "closure," including "guillotine" and "kangaroo," see Appendix I.

by a majority, could not put a termination to the speeches of those who were desirous of addressing the meeting, we should allow a small minority, or even a member or two, to tyrannise over the majority. The case has been put . . . as the terrorism of the majority. If we accepted this proposition, we should put this weapon into the hands of the minority, which might involve the company in all-night sittings. That seems to me to be an extravagant proposition, and in this particular case there seems to have been nothing arbitrary or vexatious on the part of the chairman or of the majority" (Wall v. London and Northern Assets Corporation, *post*, p. 187).

When the views of the minority have been reasonably heard, it is competent to the chairman, with the sanction of a vote of the meeting, to declare the discussion closed, and to put the question to the vote. Not everybody is entitled to speak who wants to speak, nor should a member be allowed to speak at an undue length. The purpose of a meeting is to get things done, to come to a decision on certain matters, and discussion must be relevant, and reasonable, and subordinate to the main object of the meeting. The chairman often has some discretionary power as to accepting a motion for the closure, which is an antidote to obstruction or delay. He should, however, have some regard to the rights of minorities, but at the same time wield it as a useful weapon to defeat mere obstructive tactics.

4. To postpone the consideration of the subject.—Before putting this motion to the vote the mover of the original motion should be allowed the right of reply.

5. To adjourn the debate.—Here, again, the mover of the original motion is usually allowed the right of reply, after which no further debate is permitted. It is the practice to give the person who successfully carries this motion the right of reopening the debate when it is again resumed at the same or the next meeting.

6. To adjourn the meeting.—This motion may be moved at the close of any speech or conclusion of any business. The mover of the question under debate at the time is allowed some right of reply. Unless another time is fixed, it is

usual to resume the debate or business thus interrupted at the next ordinary meeting, but it is desirable to have this point clearly understood by way of motion.

If a motion for adjournment of the debate or of the meeting is defeated, it may be moved again after the debate or meeting has gone on for a reasonable time.

7. To refer the recommendation back to the committee.—When a motion emanates from a committee whose province it is to make recommendations on certain defined subjects, it is sometimes referred back to the committee for further consideration, having regard to more recent information which may not have reached the committee, or it may be that other circumstances have intervened since the committee met which may render it inadvisable to adopt the recommendation. Further, the recommendation may not meet with the approval of the parent body, which latter may not possess the requisite knowledge to amend the motion. In any case, it is more courteous to give the committee an opportunity of submitting another recommendation. Reference back may in some cases be tantamount to rejection, and is a useful method of negating a recommendation.

VOTING

The usual methods of obtaining the sense of a meeting are—

1. **Voice.** This is only adopted when it is obvious that the meeting is practically unanimous. The chairman in this case usually reads the motion to the meeting, exclaims “As many as are of that opinion, say ‘Aye,’” and listens to the voices given in the affirmative. Then he says, “As many as are of the contrary opinion, say ‘No,’” and pauses to receive the voices given in the negative. By the volume of the voices he judges whether the Ayes or the Noes are in the majority. Then he announces “I think the Ayes (or the Noes) have it.” This gives an opportunity for anyone present to demand a vote by show of hands.

2. By show of hands, which is generally adopted in the first instance: one hand, one vote. Voting by show of hands means the ascertainment of the views of those persons present who are entitled to vote and who in fact do hold up their hands. If the chairman's declaration as to the result is challenged, a second show of hands should be demanded. *Primâ facie*, the declaration of the chairman as to the correctness of the result is decisive; but any objection as to its accuracy should be made at once, and a poll demanded; otherwise his declaration will be conclusive, unless there has been fraud or obvious mistake (*R. v. Tralee U.D.C.*, 1912, 2 I. R. 59).
3. By a division: *i.e.* a regular count of the members for and against the motion. In this case members separate themselves by going into different rooms or lobbies, the counting of members being delegated to tellers, one or two being appointed for each side of the question.
4. By a poll.

"I am clearly of opinion that the demand for a poll must be made at once, as soon as the preliminary show of hands is over. Where an election is taken by a show of hands, the chairman is to form a judgment at once, to the best of his opinion, as to who is elected; and if it is the intention to test his decision in a more formal manner, this must be done at once" (*R. v. Vicar of St. Asaph*, 1883, 52 L. J., Q. B., p. 672; *R. v. Thomas*, 1883, 11 Q. B. D. 282).

"The Common Law right on that subject is generally understood to be that any voter, however satisfied with the correctness of the declaration on the show of hands, yet may appeal from it to the whole body of electors, and keep a poll open till all have had the opportunity of attending to record their suffrages" (*R. v. The Vestry of St. Pancras* 1839, 11 A. & E., p. 26):

A demand for a poll, after it has been accepted and the meeting has come to an end, cannot be withdrawn except

by the consent of the whole meeting (*R. v. Mayor of Dover*, 1903, 1 K. B. 668). The demand for a poll is an abandonment of the result of voting by show of hands, and the voting proper begins with the poll (*Anthony v. Seger*, 1789, 1 Hagg. Cons. p. 13). The chairman is the proper person to grant a poll and to make arrangements therefor.

In *R. v. Rector, etc., of Birmingham* (1837, 7 A. & E. 254) it was held that it is no objection to the proceedings at an election in vestry that the chairman directed a poll without first taking a show of hands, although a show of hands was demanded and the poll was not demanded but was objected to.

Declaration of poll.—One of the duties of the chairman or returning officer is to declare the poll. When does an election apart from statutory provision end for legal purposes? In the Galway case (1871, 2 O'M. & H., at p. 49), it was said an election is not over till the declaration of the poll; "if there was no declaration, then there was no completed election" (*Pritchard v. Mayor of Bangor*, 1888, 13 App. Cas., at p. 253).

When a resolution is put to a meeting the persons present may take one of three courses.—They may vote for or against it or, not wishing to express a positive opinion on the question, refrain from voting at all. This being so, those who do not vote may, by not doing so, turn the scale in favour of the accused member of the club (*Labouchere v. Wharnccliffe*, 1879, 13 Ch. D., at p. 354). In this case a two-thirds majority was necessary of those present: 117 persons were present; 115 voted, of whom 77 voted for expulsion, which was in consequence held not to be by a two-thirds majority.

Where a resolution is recorded in the minutes as having been passed unanimously by a board, every member present must *prima facie* be taken to have voted for the resolution even although the votes were not expressly recorded. "A man may give his vote in divers ways, whether by writing, or by hand, or by voice, or by conduct, *e.g.* by nod. The form in which acquiescence is given matters not, if acquiescence

be actually indicated" (Everett v. Griffiths, 1924, 1 K. B. 941).

Circumstances in which a vote may be taken twice on the same resolution.—When a chairman has not formally declared the result of a vote or is in doubt as to whether his declaration is right or wrong, he is entitled if he thinks well to take a second vote on the matter, especially if he considers that through some misunderstanding the first vote did not properly represent the sense of the meeting. In *Hickman v. Kent or Romney Marsh Sheepbreeders' Association* (1920, 36 T. L. R. 528; affirmed, 1921, 37 T. L. R. 163), according to the articles governing the association, it required twelve voting in favour to four against before a certain resolution could be properly carried. The chairman having put the resolution counted and found eleven in favour and four against. As he had not voted himself and was doubtful whether one or two persons had in fact voted, he put the resolution again, and it was carried by fourteen to four. It was objected that "when the chairman had counted eleven for and four against he declared the motion carried, and he was then *functus officio* and could not validly have a recount. I do not agree. I think that if he had said that the motion was carried but was in doubt as to whether he was right or wrong, he was entitled immediately to have the votes counted again" (36 T. L. R., at p. 533).

The chairman's vote.—The chairman has one vote like the ordinary member and may also, if standing orders specifically allow, have a second or casting vote. It is usually unwise for the chairman to vote save when there is an equality of votes, and he should then, except in very special circumstances, give his vote against the motion, so as to prevent it being carried against such a strong adverse feeling. In such cases it is wiser to leave it open for further discussion. If a chairman has no casting vote and there is an equality of votes, it appears to be somewhat irregular for him to exercise it (*i.e.* his ordinary vote) after the voting for and against the motion is completed, as such a vote

would be in the nature of a casting vote. Should he, however, discover that those against the motion are equal to those for it, he should, for the foregoing reason, vote in the negative before announcing the numbers against the motion. It is somewhat irregular for the chairman to vote at all after the result of the vote is known, except in the case of a casting vote, and it is doubted whether he can exercise his ordinary vote after the count has been taken, although the chairman has not in fact made the formal declaration of the vote, which also probably applies to the vote of any other member.

CHAPTER IX

FAIR COMMENT AND PRIVILEGE IN SPEECHES

ORDINARILY the publication of statements, oral or written, of a defamatory nature renders the speaker or writer liable to be sued for slander or libel. In regard to speeches made at meetings or reports submitted in connection therewith there are three defences available :—

- I. Fair comment, *i.e.* in matters of opinion.
- II. Privilege, *i.e.* usually in matters of fact.
- III. Justification. This is available when it can be proved that the words used are true in substance and in fact.

I. FAIR COMMENT

The defence of fair comment is only available when the comment is made *bonâ fide* on a matter of *public interest*, and therefore will chiefly be concerned with proceedings of public meetings, and rarely, if at all, with the proceedings of private meetings, *e.g.* meetings of societies or limited companies. The fact that a comment is honest does not necessarily make it fair. Matters of public interest include, *inter alia*, the *public* conduct of everyone who takes part in public affairs, the administration of public institutions and local affairs or anything which invites public attention or criticism, *e.g.* a prospectus issued by a limited company. Honest belief that the charges made are true is in itself no defence (*Cooper v. Lawson*, 1838, 8 A. & E. 746).

In order that a statement may be regarded as fair comment on a matter of public interest, it must satisfy each of the following conditions :—

1. It must be comment (and not statements of fact) on a matter of public interest. The comment must be fair and based on statements of fact.
2. It must be based on facts admitted or proved to be true.
3. It must be a *bonâ fide* and honest expression of the writer's or speaker's opinion.

4. It must be strictly relevant to the facts admitted or proved to be true.
5. It must not impute to the person defamed, discreditable or improper motives, without justification.
6. It must not be a cloak for malice. Proof of malice may take a criticism *primâ facie* outside the right of fair comment (*Thomas v. Bradbury, Agnew & Co.*, 1906, 2 K. B. 627).

Mere exaggeration or even gross exaggeration will not make the comment unfair. However wrong the opinion may be in point of truth, or however prejudiced the maker of the comment, it may still be within the prescribed limits. The test is, would any fair man, however prejudiced he may be, however exaggerated or obstinate his views, have said that which this criticism has said? (*Merivale v. Carson*, 1887, 20 Q. B. D. 275). The comment must be such as a fair mind would use in the circumstances (*Joynt v. Cycle Trade Publishing Co.*, 1904, 2 K. B. 292). See *Law and Practice of Meetings of Local Authorities*, 2nd Ed., 1934 (Gee & Co.), Chapter IX.

II. PRIVILEGE

In certain cases at meetings, even though the speeches or reports complained of are defamatory, in the interests of public policy or with the object of protecting some interest of the speaker or writer, or in which there is an interest common to the speaker or writer and the person to whom the statement is made, or of some legal, social, or moral duty, no liability attaches to the publication thereof, *i.e.* no action will lie for slander or libel; in other words, the occasion is privileged. Privilege may be either—

1. Absolute—*e.g.* Statements made *in* Parliament, or *in* the course of judicial (including recorders and county courts), naval, military, or State proceedings. Absolute privilege is a complete defence, even if the statement is false or malicious. This privilege does not extend to members of Parliament making defamatory statements outside the House (*Tughan v. Craig*, 1918, 1 Ir. R. 245; *Slack v. Barr*,

1918, 82 J. P. 91 ; Copartnership Farms v. Harvey-Smith, 1918, 2 K. B. 405 ; Gerhold v. Baker, 1918, 35 T. L. R. 102).

2. Qualified—*e.g.* Statements and reports made or confined to members of meetings of local authorities and limited companies, and on other privileged occasions.

Comments in a newspaper on the proceedings at a meeting of a local authority are not published on a privileged occasion (*Ständen v. South Essex Recorders*, 1934, 50 T. L. R. 365 ; *Chapman v. Ellesmere*, 1932, 48 T. L. R. 309).

The term "*privileged communication*" comprehends all cases of communications made *bonâ fide* in performance of a duty, or with a fair and reasonable purpose of protecting the interest of the party using the words" (*Somerville v. Hawkins*, 1850, 10 C. B., p. 589) : provided the words are not uttered maliciously. "*A privileged communication* is one made on a privileged occasion, and fairly warranted by it, and not proved to have been made maliciously. *A privileged occasion* is one which is held in point of law to rebut the legal implication of malice which would otherwise be made from the utterance of untrue defamatory language. . . . *Malice*, in fact, is not confined to personal spite and illwill, but includes every unjustifiable intention to inflict injury on the person defamed, or, in the words of Brett, L. J., 'every wrong feeling in a man's mind'" (*Stuart v. Bell*, 1891, 2 Q. B., pp. 345 and 351).

The following statements are privileged, provided they are made without malice :—

1. "Communications made in the discharge of some social or moral duty" (*Stuart v. Bell*, *supra*).—"Then comes the question whether this was a privileged occasion. Where, as in this case, a body of persons are engaged in the performance of the duty imposed upon them—of deciding a matter of public administration, which interests not themselves but the parties concerned and the public—it seems to me clear that the occasion is privileged. Therefore, though what is said amounts to a slander, it is privileged, provided the person who utters it is acting *bonâ fide* in the sense that he is using the privileged occasion for the

proper purpose, and not abusing it. . . . If a person on such an occasion states what he knows to be untrue, no one ever doubted that he would be abusing the occasion But there is a state of mind, short of deliberate falsehood, by reason of which a person may properly be held by a jury to have abused the occasion, and in that sense to have spoken maliciously. If a person from anger or some other wrong motive has allowed his mind to get into such a state as to make him cast aspersions on other people, reckless whether they are true or false, it has been held—and, I think, rightly—that a jury is justified in finding that he has abused the occasion. Therefore, the question seems to me to be whether there is evidence of such a state of mind on the part of the defendant. It has been said that anger would be such a state of mind, but I think that gross and unreasoning prejudice, not only with regard to particular people, but with regard to a subject-matter in question, would have the same effect” (*Royal Aquarium Society v. Parkinson*, C. A., 1892, 1 Q. B., pp. 443 and 444); or

2. “On the ground of an interest in the party making or receiving them” (*Stuart v. Bell*, *ante*, p. 69).—“If the communication was of such a nature that it could be fairly said that those who made it had an interest in making such a communication, and those to whom it was made had a corresponding interest in having it made to them—when those two things co-exist, the occasion is a privileged one” (*Hunt v. Great Northern Railway*, 1891, 2 Q. B., p. 191).

An action was brought against the chairman of a company for slander of and concerning the manager of that company (a) to a shareholder, (b) at a meeting of directors, and (c) to the company’s solicitor.

The Court of Session held that in the circumstances each of these occasions was privileged, and that there was no relevant averment of malice, and dismissed the action (*M Gillivray v. Davidson*, 1934, S. L. T. 45).

In *George v. Goddard*, 1861 (2 F. & F. 689), words were

spoken at a meeting for the election of an overseer, imputing to a person put up for re-election that he had misappropriated parish moneys while holding the office before. Cockburn, C. J., said: "I shall tell the jury that the occasion was privileged; but that the statement, though made on such occasions, will be unprivileged if the making it was a malicious abuse of the occasion. They have a right to ascertain the real meaning and intention of the plaintiff in the words complained of, notwithstanding other words of courtesy and kindness."

Words spoken by a subscriber to a charity, *not* at a meeting of the charity, in answer to inquiries by another subscriber respecting the conduct of a medical man in his attendance upon the objects of the charity are not, merely on account of those circumstances, a privileged communication (*Martin v. Strong*, 1836, 5 A. & E. 535; see also *Kine v. Sewell*, 1838, 3 M. & W., at p. 303).

Words not actionable in themselves are not actionable when spoken of one in an office, profession, or trade, unless they touch him in his office (*Doyley v. Roberts*, 1837, 3 Bing. N. C., at p. 840).

Publication

1. Unnecessary publication.—Privilege will, however, be lost if there is *unnecessary publication*. "A communication sufficient for the purpose might have been made in measured language. The want of proper caution had rendered the publication actionable as being published to the world at large. Every unauthorised publication to the detriment of another was, in point of law, to be considered as malicious" (*Brown v. Croome*, 1817, 2 Starkie, p. 301).

"When once the learned Judge had laid down that the occasion was privileged, the only question for the jury to consider was whether the defendant acted from a sense of duty, or was actuated by some improper motive, that is, that he acted maliciously" (*Clark v. Molyneux*, 1877, 3 Q. B. D., p. 249).

And so if reporters are present by express invitation

at a meeting the privilege is lost; or if a report is sent to the Press. "If a person whose duty it is to make a statement to certain persons calls in other persons to whom he owes no duty to make the statement, in order that those other persons may hear it, I should be inclined to say . . . that there would be evidence of malice in his making it in the presence of others who might promulgate it" (*Pittard v. Oliver*, 1891, 1 Q. B., p. 477).

"Where, indeed, an opportunity is *sought* for making such a charge before third persons, which might have been made in private, it would afford strong evidence of a malicious intention, and thus deprive it of that immunity which the law allows to such a statement, when made with honesty of purpose" (*Toogood v. Spyring*, 1834, 3 L. J. Ex., at p. 352).

2. The mere presence of reporters, however, does not necessarily destroy privilege.—"The mere fact of a third person being present does not render the communication absolutely unauthorised" (*Toogood v. Spyring*, 1834, 3 L. J. Ex., at p. 352). "The presence of these people [reporters] left his duty to discuss the matter untouched; the occasion was privileged for the performance of that duty, and the privilege was not taken away by the presence of such people under such circumstances" (*i.e.* reporters being present in accordance with the regular custom of the meeting) (*Pittard v. Oliver*, 1891, 1 Q. B., p. 478).

MALICE

Privilege may be lost on proof that the defamatory statement was made and published maliciously. Malice includes :—

1. Personal spite and ill-will.
2. Unjustifiable intention to inflict injury on the person defamed.
3. Every wrong feeling in a man's mind (*Stuart v. Bell*, 1891, 2 Q. B. 341).

Circumstances in which malice may be inferred.

1. Unnecessary publication. Every unauthorised publi-

- cation to the detriment of another is in point of law to be considered malicious (*Brown v. Croome*, *ante*).
2. Language used being too violent for the occasion and the circumstances (*Spill v. Maule*, 1869, L. R., 4 Ex. 232), though strong and intemperate language when used *bonâ fide* is not necessarily evidence of malice (*Edmondson v. Birch & Co.*, 1907, 1 K. B. 371).
 3. Where defendant knows or has reason to believe that the statements are untrue (*Gerard v. Dickenson*, 1590, 4 Rep. 18).
 4. When words are uttered by the defendant with the intention of injuring the plaintiff or where the parties have previously quarrelled (*Hooper v. Truscott*, 1836, 2 Bing. N. C. 457).
 5. Where defendant is actuated by personal resentment or any wrong or improper motive (*Rogers v. Clifton*, 1803, 3 B. & P. 587).

But mere inadvertence or forgetfulness or careless blundering or negligence or want of sound judgment or honest indignation or that the words used are strong, is no evidence of malice, and a privileged statement if defamatory is protected if made *bonâ fide*, honestly believed to be true and made without malice. If the defendant is able to prove the truth of his statement, he has no need of privilege; the only use of privilege is in cases where the truth of the statement cannot be proved (*Howe v. Jones*, 1885, 1 T. L. R. 462). If the words are true in substance and in fact, a third defence is open to the defendant, viz., justification.

III. JUSTIFICATION

To succeed under this plea it is necessary to prove—

1. That the words complained of are true in substance and in fact; and
2. That the whole of the defamatory words is *substantially* true.

CHAPTER X

THE PRESERVATION OF ORDER AT PUBLIC MEETINGS

THE CAUSES OF DISORDER

DISORDER at public meetings generally arises from one or more of the following causes :—

1. Irrelevant or violent interruptions require to be dealt with in a firm and tactful manner by the chairman. Some interruptions are welcomed. They agreeably vary the monotony of a meeting, and often give the speaker an opportunity of relieving his speech by a well-delivered retort. But unless kept within due bounds, disorder generally follows.

A somewhat common practice at certain meetings, particularly those held in the open air, is for the hearers to make a running commentary on the speech while it is being delivered. This habit, which is apparently growing, has its advantages. It undoubtedly tends to enliven the meeting, promptly extinguishes the bore, and abruptly brings to a close the speech of the person who has finished what he has to say, but will not resume his seat. At the same time, it usually upsets the sequence and order of the prepared speech, and not infrequently brings forth disorder and confusion.

The chairman should use his discretion, and insist on questions being asked at the close of the speech, and also see that sufficient and proper time is allowed therefor. Sometimes he should allow an opponent to reply, but it all depends on circumstances and the temper of the audience. Of course, the chairman is not bound in all circumstances to allow questions or to allow opponents to speak if time will not permit.

2. Organised opposition is very difficult to deal with, especially when the conveners of the meeting are unprepared for it. Generally, there is some indication beforehand, when it is folly not to be fully ready for it.

People who come merely to disturb a meeting generally prefer the back of the room, so that, should their courage fail them, there is a convenient exit for escape in time of trouble. It is a good plan to put probable disturbers in the front of the room, keeping them apart as much as possible. If they know there is a stronger force in the rear, they will often come to the conclusion that discretion is the better part of valour. Again, if the disturbers are all together it impedes the work of the "chucker-out," and his advent generally leads to a free fight, uproar, and disorder. Stewards of public meetings should be men of good physique, good temper, and not afraid of a row. They should know their business thoroughly, and it is wise for them to meet and have some preliminary understanding on the matter.

An audience will, as a rule, be kept in good temper when they see an interrupter removed in an expeditious and effective way; such an expulsion will inevitably quell the spirits of the remaining disturbers, and repair the broken harmony of the meeting. But when a stalwart interrupter defends himself with vigour, and there is an unseemly struggle, the feelings of the meeting will often veer round to him and encourage his weaker associates. After all, it appeals to the sporting instinct when a man baffles half a dozen perspiring stewards; and when the latter begin to lose their heads, and not play the game, there will be the inevitable cries of "Cowards!" "Shame!" and the like. It is bad enough to have a disorderly person in a meeting, but to fail to remove him is disaster.

3. A weak and tactless chairman may cause disorder at a meeting. If he is not fair, firm, competent, or impartial, trouble may easily arise. He should carefully observe the spirit and temper of his audience, and act accordingly; quelling at the instant any signs of incipient disorder. At the same time he should allow the audience to have a little of their own way. An audience objects to being domineered over, but does not mind being dominated in a pleasant yet masterful way.

When disorder appears to be imminent, it is unwise for the chairman to get angry and talk about expulsion and the police ; rather, he should endeavour to soothe the audience by a few well-chosen remarks, and appeal for fair play ; above all, not appear to be injured or insulted. In a public meeting, when he has ruled on a point of order, he should abide by his decision, even though he may be wrong. The chairman, again, can remove one not uncommon cause of disorder, by seeing that the meeting commences at the duly appointed time.

As to well-conducted opponents, it is a great mistake to browbeat them ; courtesy to them costs little, and is worth much.

To ask the stewards to remove disorderly persons should be a last resource, adopted only when all other means have failed. On the other hand, if the nature of the meeting permits it, it is a good plan to adjourn the meeting for a short time—say, half an hour—when a change of scene, and a little ventilation of the room, may bring peace and concord.

4. Injudicious and intolerant speakers, too, are responsible for disorder in some cases. An audience requires attention, respect, and courtesy. The successful speaker endeavours to understand his hearers, to interest and inspire them, to imbue them with his spirit and ideas, and to carry them with him. If there is an element of opposition present, partisan feeling should be somewhat subdued. Insulting remarks respecting the opinions of those opposed to the speaker may lead to recriminations and disorder. Any suspicion of unnecessary dignity or hauteur should be avoided.

It is essential to keep the audience in good humour with themselves and the speaker. At first, it is undesirable to take too much notice of slight interruptions, but if they continue the speaker should appeal to the sweet reasonableness, fair play, and good sense of the meeting, neither scolding nor indulging in a fit of bad temper. Above all, it should be remembered that audiences are governed rather by impulse than by reason.

All persons who attend meetings, whether public or private, whether admission is free or otherwise, are bound to observe the rules laid down by the conveners of the meeting and submit to their reasonable control. Where there is no charge for admission, the licence to attend may be revoked at any time, and any person whose licence has been revoked becomes a trespasser and must withdraw, and upon refusal to withdraw may be ejected, and such *reasonable* force as may be necessary to effect his removal is lawful.

A person who is entitled to attend a meeting is entitled to remain, provided he conforms to the regulations governing the meeting; a stranger may only remain on sufferance and must withdraw when requested, whether guilty of disorderly conduct or not. In either case he may be removed with reasonable force after being requested to withdraw, and any resistance to removal is unjustifiable.

At meetings when the public are present by licence, disorderly persons may be removed; and where a breach of the peace ensues the police may be called in, and the offender given into custody. Even if a person has paid for admission to a meeting, he may be expelled—his remedy being breach of contract, and not damages for expulsion.

In *Humphries v. Connor* (1864, 17 Ir. C. L. R. 1) it was held that a police officer was justified in removing a provocative emblem from the person of a lady, thereby protecting her from the threatened violence of a hostile crowd, and thus preserving the public peace which would otherwise have been broken.

A public meeting, whose object and the conduct of whose members is strictly lawful, becomes an unlawful assembly if it provokes a breach of the peace and it is impossible to preserve order by any means other than by dispersing it.

THE PRACTICE OF THE POLICE IN PRESERVING ORDER

The legal aspect of order at public meetings and expulsion therefrom was expressed in the report of the Departmental Committee of the Home Office (1909) as follows :—

We consider that for the purposes of the present inquiry a public meeting may properly be defined to include any lawful meeting called for the furtherance or discussion of a matter of public concern to which the public, or any particular section of the public, is invited or admitted, whether the admission thereto is general or restricted. This definition would seem to include any meeting called for any political or municipal purpose to which the public are admitted, whether by ticket or otherwise. It would also include many non-political meetings, such as bazaars, public lectures, and the like, but not shareholders' or committee meetings to which the public are not admitted.

It should be remembered that a public meeting held indoors is not necessarily, or indeed usually, held in what is legally a public place. If a public building is hired, or even lent, to an association or other section of the public for the purposes of a meeting, it becomes in law for the time being a non-public place. Meetings held in assembly rooms, hotels, schoolrooms, etc., are also held on what are in law private premises.

This distinction has a very important bearing on the question referred to this Committee. Where a public meeting is held on private premises, as defined above, the persons present are only there on the invitation of the promoters of the meeting, and by their leave and licence. They have no more right of access to the premises, and no more right to remain on them when requested to leave by the promoters, than if they had been invited to enter a private house by the occupier of that house. If they refuse to leave when called on to do so by the chairman or representatives of the promoters, they become trespassers, and they may after a reasonable interval be removed (without undue violence) by the promoters of the meeting or by their authorised agents, and this would seem to be the case even where the person so requested to leave has paid for admission to the meeting, and where his admission money is not returned. It is this Common Law right of expelling trespassers which is frequently, in the case of continued interruption, exercised by the stewards of a public meeting at the direction of the chairman, who for this purpose represents the promoters of the meeting. So long as no undue violence is proved, the stewards so acting are not liable in damages for assault.

The status of the police in respect of order at public meetings has next to be considered. Their duties in this respect are not defined by any Public Statute, but are, generally speaking, "to keep the King's peace." The members of a police force are sworn in as constables, and are vested with all the powers and liabilities belonging by Common Law to the ancient constables. Apart from felony or suspicion of felony, which we need not deal with here, constables have no general powers at Common Law to arrest, except when a breach of the peace is committed. There are, however, numerous Acts which empower constables to arrest and take the names of offenders, and we have had cited to us an instance of a

local Act (applying to Birmingham), which empowers them to arrest any person found committing any offence, punishable either on indictment or on summary conviction.

In the case of highways and places to which the public have ordinary access, the police have large powers of dealing with disorder and obstruction ; but in the case of meetings held on private premises, whether for public purposes or not, the police have no power to enter except by leave of the occupier of the premises or promoters of the meeting, or when they have good reason to believe that a breach of the peace is being committed. It is no part of the duty of the police to eject trespassers from private premises. They may (acting in their capacity of private citizens) assist to eject them, if asked to do so by the occupier of the premises or the promoters of the meeting, but they are under no obligation to do so. They may, and, indeed, are bound to, intervene in the case of an actual breach of the peace ; and they may arrest without warrant a person whom they have seen committing a breach of the peace ; and even if they have not seen any such breach committed, they may arrest without warrant a person charged by another for such breach, if there are reasonable grounds for apprehending the continuance or immediate renewal of such breach. We may further point out that within private premises a policeman taking part in the preservation of order is, generally speaking, under the same liability to an action for damages as a private person ; except that under the Public Authorities Protection Act, 1893, legal proceedings against the police are subject to some technical limitations.

RELIGIOUS MEETINGS

These meetings are protected from disturbances and profanation by the Places of Religious Worship Act, 1812, s. 12 of which provides that any person wilfully and maliciously or contemptuously disquieting or disturbing any meeting or congregation of persons assembled for religious worship, or molesting or misusing any person officiating at such meeting or congregation, or any person there assembled, upon proof before any justice by two or more credible witnesses, is to find two sureties, to be bound in the sum of fifty pounds to answer for such offence, and in default to be committed to prison till the next quarter sessions, and upon conviction to forfeit the sum of forty pounds. See also the Religious Disabilities Act, 1846, and the Ecclesiastical Courts Jurisdiction Act. 1860.

RIGHT OF POLICE TO ATTEND MEETING TO WHICH PUBLIC IS INVITED

Police officers are entitled in the execution of their duty to prevent the commission of any offence or breach of the peace, to enter and remain on private premises where a meeting to which the public is invited is being held. The police must have a reasonable anticipation of a misdemeanour or a breach of the peace (*Thomas v. Sawkins*, 1935, 2 K. B. 249; *Humphries v. Connor*, 1864, 17 Ir. C. L. R. 1; *O'Kelly v. Harvey*, 1883, 14 L. R. Ir. 105).

In *Lansbury v. Riley* (1914, 3 K. B. 229) it was held that where a Court of summary jurisdiction is satisfied that a person who is brought before it has been guilty of inciting others to commit breaches of the peace and intends to persevere in such incitement the Court may order him to enter into recognisances and to find sureties for his good behaviour or to be imprisoned in default of so doing. It is not essential to the exercise of that jurisdiction that the conduct of the defendant should have caused any individual person to go in bodily fear.

INDIVIDUAL ACTS OF DISTURBANCE AT PUBLIC MEETINGS

By s. 54 of the Metropolitan Police Act, 1839 (which applies only to London), it is enacted that every person shall be liable to a penalty of 40s., who, within the limits of the Metropolitan Police District, shall in any thoroughfare or public place, use any threatening, abusive, or insulting words or behaviour with intent to provoke a breach of the peace, or whereby a breach of the peace may be occasioned. And it shall be lawful for any constable belonging to the Metropolitan Police Force to take into custody, without warrant, any person who shall commit any such offence within view of any such constable.

PUBLIC MEETING ACT, 1908

Penalty on endeavour to break up public meeting.—

(1) Any person who at a lawful public meeting acts in a dis-

orderly manner for the purpose of preventing the transaction of the business for which the meeting was called together shall be guilty of an offence, and, if the offence is committed at a political meeting held in any parliamentary constituency between the date of the issue of a writ for the return of a Member of Parliament for such constituency and the date at which a return to such writ is made, he shall be guilty of an illegal practice within the meaning of the Corrupt and Illegal Practices Prevention Act, 1883 (46 & 47 Vict. c. 51), and in any other case shall, on summary conviction, be liable to a fine not exceeding five pounds, or to imprisonment not exceeding one month.

(2) Any person who incites others to commit an offence under this section shall be guilty of a like offence.

(3) If any constable reasonably suspects any person of committing an offence under the foregoing provisions of this section, he may if requested so to do by the chairman of the meeting require that person to declare to him immediately his name and address, and if that person refuses or fails so to declare his name and address or gives a false name and address he shall be guilty of an offence under this subsection and liable on summary conviction thereof to a fine not exceeding forty shillings, and if he refuses or fails so to declare his name and address or if the constable reasonably suspects him of giving a false name and address, the constable may without warrant arrest him" (Public Order Act, 1936, s. 6).

The Metropolitan Police view of the Act of 1908 was stated in May, 1913, as follows: The Public Meeting Act gives no additional power to and imposes no additional duties on the police, but it makes the deliberate interruption of public meetings an offence cognisable by the law. The view taken by the police is that they are not required to take any initiative under the Act, and are not empowered to arrest interrupters. It is not their business to secure a hearing for speakers. It is for the speakers to get on such good terms with their audience that they can secure a hearing for themselves. The police ought not to interfere except to prevent a breach of the peace, and it may and must often

happen that an act constituting a breach of the peace may not be done within sight of a police officer, or if done in his sight it may not be in his power to arrest the particular wrongdoer.

PUBLIC ORDER ACT, 1936 *

This Act is designed to prohibit the wearing of uniforms in connection with political objects and the maintenance by private persons of associations of military or similar character ; and to make further provision for the preservation of public order on the occasion of public processions and meetings and in public places.

The Act defines (see also *ante*, p. 3) that " Public procession " means a procession in a public place.

" Uniform," as applied to clothing, is not defined in the Act, but may be defined as clothing of similar pattern, colour, or material worn by a number or body of persons in a manner which to a reasonable-minded person would imply that such body or persons belonged to some organisation.

The wearing of military, naval, or air force uniforms by persons not serving in H.M. Forces is prohibited by the Uniforms Act, 1894.

1. Prohibition of uniforms in connection with political objects.—(1) Subject as hereinafter provided, any person who in any public place or at any public meeting wears uniform signifying his association with any political organisation or with the promotion of any political object shall be guilty of an offence :

Provided that if the chief officer of police is satisfied that the wearing of any such uniform as aforesaid on any ceremonial, anniversary, or other special occasion will not be likely to involve risk of public disorder, he may, with the consent of a Secretary of State, by order permit the wearing of such uniform on that occasion either absolutely or subject to such conditions as may be specified in the order.

* See *The Law relating to Public Meetings and Processions*, 1937, by the same author (Pitmans).

(2) Where any person is charged before any court with an offence under this section, no further proceedings in respect thereof shall be taken against him without the consent of the Attorney-General except such as the court may think necessary by remand (whether in custody or on bail) or otherwise to secure the due appearance of the person charged, so, however, that if that person is remanded in custody he shall, after the expiration of a period of eight days from the date on which he was so remanded, be entitled to be discharged from custody on entering into a recognisance without sureties unless within that period the Attorney-General has consented to such further proceedings as aforesaid.

[Section 2 prohibits quasi-military organisations.]

3. Powers for the preservation of public order on the occasion of processions.—(1) If the chief officer of police, having regard to the time or place at which and the circumstances in which any public procession is taking place or is intended to take place and to the route taken or proposed to be taken by the procession, has reasonable ground for apprehending that the procession may occasion serious public disorder, he may give directions imposing upon the persons organising or taking part in the procession such conditions as appear to him necessary for the preservation of public order, including conditions prescribing the route to be taken by the procession and conditions prohibiting the procession from entering any public place specified in the directions :

Provided that no conditions restricting the display of flags, banners, or emblems shall be imposed under this subsection except such as are reasonably necessary to prevent risk of a breach of the peace.

(2) If at any time the chief officer of police is of opinion that by reason of particular circumstances existing in any borough or urban district or in any part thereof the powers conferred on him by the last foregoing subsection will not be sufficient to enable him to prevent serious public disorder being occasioned by the holding of public processions in that borough,

district or part, he shall apply to the council of the borough or district for an order prohibiting for such period not exceeding three months as may be specified in the application the holding of all public processions or of any class of public procession so specified either in the borough or urban district or in that part thereof, as the case may be, and upon receipt of the application the council may, with the consent of a Secretary of State, make an order either in terms of the application or with such modifications as may be approved by the Secretary of State.

This subsection shall not apply within the City of London as defined for the purposes of the Acts relating to the City police or within the Metropolitan police district.

(3) If at any time the Commissioner of the City of London police or the Commissioner of police of the Metropolis is of opinion that, by reason of particular circumstances existing in his police area or in any part thereof, the powers conferred on him by subsection (1) of this section will not be sufficient to enable him to prevent serious public disorder being occasioned by the holding of public processions in that area or part, he may, with the consent of the Secretary of State, make an order prohibiting for such period not exceeding three months as may be specified in the order the holding of all public processions or of any class of public procession so specified either in the police area or in that part thereof, as the case may be.

(4) Any person who knowingly fails to comply with any directions given or conditions imposed under this section, or organises or assists in organising any public procession held or intended to be held in contravention of an order made under this section or incites any person to take part in such a procession, shall be guilty of an offence.

4. Prohibition of offensive weapons at public meetings and processions.—(1) Any person who, while present at any public meeting or on the occasion of any public procession, has with him any offensive weapon, otherwise than in pursuance of lawful authority, shall be guilty of an offence.

(2) For the purposes of this section a person shall not be deemed to be acting in pursuance of lawful authority unless he is acting in his capacity as a servant of the Crown or of either House of Parliament or of any local authority or as a constable or as a member of a recognised corps or as a member of a fire brigade.

5. Prohibition of offensive conduct conducive to breaches of the peace.—Any person who in any public place or at any public meeting uses threatening, abusive, or insulting words or behaviour with intent to provoke a breach of the peace or whereby a breach of the peace is likely to be occasioned, shall be guilty of an offence.

[Section 6, see *ante*, p. 81.]

Section 7 (2) provides that persons guilty of any offence (other than under section 2) will be liable on summary conviction to imprisonment for a term not exceeding three months or to a fine not exceeding fifty pounds, or to both such imprisonment and fine.

By section 7 (3), a constable may without warrant arrest any person reasonably suspected by him to be committing an offence under sections 1, 4, or 5 of the Act.]

Writing on pavements and walls.—An attempt was made during the discussion of the Public Order Act to make it an offence to write inflammatory words on pavements and walls. This was not proceeded with, as it was stated that the Home Office had approved of a by-law to this effect which might be made by local authorities, *i.e.* “No person shall, for the purpose of advertising or disseminating news, propaganda, or the like, deface the footway or roadway of any street by writing or other marks.”

DISPERSAL OF PUBLIC MEETINGS

An unlawful assembly is an assembly of persons with the intention of carrying out any common purpose, whether such purpose be lawful or unlawful, in such a manner as to give firm and courageous persons in the neighbourhood of such assembly ground to apprehend a breach of the peace in consequence of it. The alarm must not be merely such

as would frighten any foolish or timid person, but must be such as would alarm persons of reasonable firmness and courage. The characteristic of an unlawful assembly is the danger of a breach of the peace.

“Any meeting assembled under such circumstances as, according to the opinion of rational and firm men, are likely to produce danger to the tranquillity and peace of the neighbourhood is an unlawful assembly. You will have to say whether, looking at all the circumstances, these defendants attended an unlawful assembly, and for this purpose you will take into consideration the way in which the meetings were held, the hour of the day at which the parties met, and the language used by the persons assembled and by those who addressed them. Everyone has a right to act in such cases as he may judge right, provided it be not injurious to another, but no man or number of men has a right to cause alarm to the body of persons who are called the public. You will consider how far these meetings partook of that character, and whether firm and rational men having their families and property there would have reasonable ground to fear a breach of the peace” (*R. v. Vincent*, 1839, 9 C. & P. 91; see also *R. v. Graham*, 1888, 16 Cox C. C. 420). In *R. v. Londonderry Justices* (1891, 28 L. R. Ir., at p. 450) it was said: “If danger arises from the exercise of lawful rights resulting in a breach of the peace, the remedy is the presence of sufficient force to prevent that result, not the legal condemnation of those who exercise those rights.”

Justices have jurisdiction to bind over to be of good behaviour a person who, in addressing meetings in public places, although he does not directly incite to the commission of breaches of the peace, uses language the natural consequence of which is that breaches of the peace will be committed by others, and who intends to hold similar meetings, and use similar language in the future (*Wise v. Dunning*, 1902, 1 K. B. 167).

D was about to address a number of people in a street when a police officer, who reasonably apprehended that a breach of the peace would occur if the meeting were held, forbade her to do so. D persisted in trying to hold the

meeting and obstructed the police officer in his attempts to prevent her doing so. Neither D nor any of the persons present at the meeting committed, incited, or provoked a breach of the peace. It was held that, as it is the duty of a police officer to prevent breaches of the peace which he reasonably apprehends, D was guilty of wilfully obstructing the officer when in the execution of his duty (*Duncan v. Jones*, 1936, 1 K. B. 218).

An unlawful assembly according to the common opinion is a disturbance of the peace by persons barely assembling together with the intention to do a thing, which if it were executed would make them rioters, but neither actually executing it nor making a motion toward the execution of it.

A meeting is not unlawful because it will excite unlawful opposition. "What has happened here is that an unlawful organisation has assumed to itself the right to prevent the appellants and others from lawfully assembling together, and the finding of the justices amounts to this, that a man may be convicted for doing a lawful act if he knows that his doing it may cause another to do an unlawful act. There is no authority for such a proposition" (*Beatty v. Gillbanks*, 1882, 9 Q. D. B., at p. 314). The principle of this case is qualified by the absolute necessity for preserving the King's peace, *e.g.* a meeting becomes unlawful (1) where illegality in meeting provokes a breach of the peace; (2) where the meeting is lawful but peace can only be kept by dispersing it, then such meeting can be dispersed, and if the meeting does not disperse it becomes an unlawful assembly.

Limitations on the right of public meeting are really limitations on individual freedom. A meeting is not made unlawful by official proclamation of its illegality unless such proclamation is used in virtue of some special Act of Parliament. A meeting may be lawful though its holding may be contrary to public interest.

CHAPTER XI

EXPULSION FROM MEETINGS AND SOCIETIES

THE expulsion of a member of a meeting (*i.e.* of a person who is entitled to attend thereat) except for disorderly conduct of a serious nature is illegal (*Vaughan v. Hampson*, 1875, 33 L. T. 15) unless standing orders otherwise provide, and such standing orders are within the powers of the constitution governing the meeting.

“The power of suspending a member guilty of obstruction or disorderly conduct during the continuance of any current sitting is reasonably necessary for the proper exercise of the functions of any legislative assembly of this kind (*N.S. Wales Assembly*), and it may very well be that the same doctrine of reasonable necessity would authorise a suspension until submission or apology by the offending member, which, if he were refractory, might cause it to be prolonged (not by the arbitrary discretion of the assembly but by his own wilful default) for some further time” (*Barton v. Taylor*, 1886, 11 App. Cas., at p. 204).

1. It is the duty of the chairman to preserve and maintain order at a meeting, and in considering the expulsion of disorderly persons therefrom there are two classes concerned, those who have a right to be present, *e.g.* members of a company, council or society, and those who are present by the grace and favour of the meeting. If such a member of a meeting is guilty of gross disorderly conduct, he may be removed or excluded for a time or even expelled. If the good sense and conduct of the members present prove insufficient to secure order and decency of debate, the law would sanction the use of that degree of force which might be necessary to remove the person offending from the place of meeting and keep him excluded. The same rule would apply *à fortiori* to disorder caused by persons not members. When a person has no right to be present he can only remain so long as his presence is not objected

to, and when he is requested to leave for good reason or no reason he must go, otherwise force may be used to remove him (*Doyle v. Falconer*, 1866, L. R., 1 P. C. 328).

2. The chairman must act with tact and discretion in case of disorder.—In the event of a member of a meeting being disorderly, the chairman may order his removal if he behaves in such a way as to interfere unduly with the reasonable conduct of the meeting or prevents the proper transaction of business, or worse, stops the business of the meeting altogether. It is usually desirable and essential that the chairman should be supported by the majority of the meeting before he orders the removal of a disorderly member, and he should take care not to give instructions for expulsion—which should be delegated to a stalwart official—unless he is quite sure such instructions will be expeditiously and efficiently carried out together with the body of the recalcitrant member. In any event, before giving orders for the removal of a disorderly person, every reasonable opportunity should be given to him to withdraw himself from the meeting without the use of force, and in some cases, especially where the disorderly member is the possessor of a good physique and much cantankerousness, it may be better to adjourn the meeting rather than have an unseemly struggle between an official of the meeting and one of its less estimable members. If the disorderly person acts in such a way in resisting expulsion as to bring about a breach of the peace, the police may be called in to remove him; but drastic methods of expulsion of members or others are usually to be avoided except in very exceptional circumstances.

3. It is the inherent right of all duly constituted bodies to eject anyone who is so disorderly as to prevent the transaction of business.—Refusal to leave a meeting held in a private place (*e.g.* halls, assembly rooms, theatres, and schoolrooms) when called on by the chairman or representatives of the conveners makes a person a trespasser. After a reasonable interval such person may be removed without undue violence by the authority of the conveners

of the meeting, even if he has paid money for admission, which money has not been returned. In *Wood v. Leadbitter* (1845, 13 M. & W. 838), which was an action for trespass for assault and imprisonment, the steward of the Doncaster races sanctioned the issue of tickets of admission to the grand stand. These were sold for a guinea each, and entitled the holders to come into the stand and enclosure round it during the races. The plaintiff purchased one of these tickets, and came into the enclosure on race days. The defendant, by order of the steward, desired him to leave it, and on his refusing to do so the defendant, after a reasonable time has elapsed for his quitting it, put him out, using no unnecessary violence, but not returning the guinea. It was held that the jury were properly directed to find the issue for the defendant. A right to come and remain for a certain time on the land of another can be granted only by deed; and a parol licence to do so, though money be paid for it, is revocable at any time, and without paying back the money. At the Leeds Assizes the plaintiff, who was rejected with violence from a political meeting by two stewards (causing fracture of his knee) for interjecting a remark during a speech by Mr. Churchill, brought an action against the chairman of the meeting and fifteen other persons, and was awarded by a jury £100 damages for assault (*Hawkins v. Muff*, *The Times*, 24th March, 1911).

The rights of theatre goers.—*Hurst v. Picture Palaces* (1915, 1 K. B. 1) lays down the following proposition: that if a visitor to a theatre has paid for his seat he has a right to retain the seat so long as he behaves himself and keeps within the regulations laid down by the management. *Wood v. Leadbitter* is not a decision which can be applied in its integrity in a Court which is bound to give effect to equitable considerations. “The case of *Wood v. Leadbitter* (*ante*) was now obsolete on the ground that there was now a contract between the theatre proprietors and the taker of a seat without the necessity for a seal. And if the seat-holder had paid for his seat and behaved himself quietly he had a right to see the show. It might be called an equity,

but whatever it was the visitor was entitled to retain his seat so long as he behaved himself and kept within the regulations laid down by the management" (per Channell, J.). "A licence, coupled with an agreement not to revoke it for good consideration, conferred an enforceable right, and the grant of a right to enter upon premises and see the spectacle included a contract not to revoke till the performance was ended" (per Buckley, L. J.). "A dispensation or licence properly passeth no interest, nor alters or transfers property in anything, but only makes an action lawful which, without it, had been unlawful" (*Thomas v. Sorrell*, 1674, Vaugh. 357). In *Lowe v. Adams* (1901, 2 Ch. 598), it was doubted whether *Wood v. Leadbitter* was still good law.

Where a passenger was forcibly removed from a railway carriage for a failure to produce his ticket which he had lost, it was held that the contract between him and the company did not authorise the company to remove him from the carriage, and that an action for assault was maintainable. "It seems to me to be a totally different thing from a contract for an interest in land; and it seems to me absurd to treat the case as one of a revocable licence. The doctrine of *Wood v. Leadbitter* does not appear to me to be at all applicable to the case of such a contract" (*Butler v. Manchester &c. Railway*, 1888, 21 Q. B. D., at p. 213). In *Kerrison v. Smith* (1897, 2 Q. B. 445), it was held, though permission to post bills was a licence, and therefore, not being by deed, was revocable, an action was maintainable for breach of contract.

If no undue violence is proved, the stewards of a meeting are not liable in damages for assault, but if admission money has been paid the proper action would be for breach of contract.

"It is hardly necessary to say . . . that it does not follow from the fact that an agreement of the kind which was here entered into does not create an interest in land, but only a licence . . . that such an agreement does not create contractual rights in respect of which an

action will lie in the event of contravention of them” (Warr & Co. v. London County Council, 1904, 1 K. B., p. 723).

4. Persons who disturb or interrupt a meeting can be ejected from the meeting, but can be arrested by the police only if their conduct is such as to amount to a breach of the peace.

“Proof of annoyance and disturbance, such as crying ‘Hear, hear,’ and putting questions to the speaker, and making observations on his statements, would not be a sufficient justification of the defendant’s conduct [*i.e.* giving such person in charge to the police]; but, in order to find a verdict for the defendant, they must be satisfied that what was done by the plaintiff amounted to a breach of the peace” (Wooding v. Oxley, 1839, 9 C. & P., p. 5).

5. Where meetings are not held in private places, *e.g.* highways, commons, and places where the public have ordinary access, the police have larger powers of dealing with disorder and obstruction than in meetings held in private places. Such places, being dedicated to public use for passing and going along them, must not be used in such a way as to interfere with the ordinary person’s right to use them in the way permitted him by law. The test generally is, Does such meeting prevent the right of free passage, *i.e.* does it cause an obstruction? If a meeting causes an obstruction, it may be dispersed by the police, or if it is a meeting of persons who either intend to commit, or who lead others to entertain a reasonable fear that the meeting will commit, a breach of the peace it constitutes an unlawful assembly and the police may likewise interfere. The essential characteristic therefore of an unlawful assembly is the danger of a breach of the peace.

EXPULSION AND SUSPENSION FROM SOCIETIES AND CLUBS

Expulsion from a private body, *e.g.* an unincorporated society or club in which all the members have a common

interest in its privileges, is governed by the following rules :—

1. The power of expulsion (whatever may be the grounds of expulsion) is not inherent or implied in a society or club unless appropriate provision for expulsion is made in its constitution or rules ; the latter cannot be altered to provide for expulsion unless with the consent of every member (including apparently the offending member), or there is provision in the rules for their alteration, though where the rules provide that they may be altered, a rule providing for expulsion may be adopted by the passing of a resolution to that effect if the procedure provided by the rules is strictly followed. Such alteration must be made *bonâ fide*, and in the best interests of the members as a whole (Allen v. Gold Reefs of West Africa, *post*, p. 135).
2. Notice of the meeting must have been given within the times provided by the rules, otherwise the proceedings are invalid (Labouchere v. Wharncliffe, *ante*, p. 64). Every member of the committee having the right to attend must be properly summoned to the meeting, even if he has waived his right to attend (*re* Portuguese Consolidated Copper Mines, *ante*, p. 16 ; Young v. Ladies' Imperial Club, *ante*, p. 12).
3. The committee which decides as to whether a member is to be expelled or not must act judicially and be composed of impartial persons ; the presence of the accuser on the committee would probably invalidate the decision. The committee must make a fair inquiry into the truth of the alleged facts, and where the rules provide that a resolution for expulsion must be carried by a specified majority of those present it must be the specified majority of all those present including those who do not vote, and the question must be properly put to the meeting (Labouchere v. Wharncliffe, *ante*,

p. 64). The rules governing the society or club must be strictly complied with, and the committee must act *bonâ fide*.

4. The person who has been expelled must have been found guilty, after full and proper inquiry, of some definite act which under the rules can be properly penalised by the forfeiture of his privileges as a member; he must have been proved guilty after a proper judicial inquiry in which reasonable rules of procedure have been observed, *e.g.* giving reasonable notice of the charge and a reasonable opportunity to the accused of defending himself (*Gray v. Allison*, 1909, 25 T. L. R. 531), and proper notice of the real reasons upon which the committee are to consider, and thus giving him an opportunity of being heard thereon (*D'Arcy v. Adamson*, 1913, 29 T. L. R. 367, and see *James v. Chartered Accountants*, *ante*, p. 17).

A club was formed and subsequently registered under the Companies Acts in 1885. In 1923 the committee of the club passed a resolution adopting certain by-laws, *inter alia* prohibiting disorderly conduct. The plaintiff was summoned by the committee to attend a special meeting to investigate a charge of disorderly conduct. He neither attended nor offered any explanation, and was expelled. It was held that the committee were not in law the directors of the company, and had no authority to exercise the powers of the directors to exclude the plaintiff from membership; and that the power of expulsion had not been exercised by the committee in accordance with the rules of the club; and that therefore the plaintiff was still a member of the club (*Murphy v. Synnott*, 1925, N. I. 14).

5. The Court will not interfere with the decision of the members of a club professing to act under their rules, unless it can be shown either that the rules are contrary to natural justice, or that what has been done is contrary to the rules, or

that there has been *mala fides* or malice in arriving at the decision (*Dawkins v. Antrobus*, 1879, 17 Ch. D. 615).

PRINCIPLES GOVERNING EXPULSION

A member of a society or club not entrusted with arbitrary disciplinary powers by some statute, is entitled to question a decision of its governing body which purports to expel or suspend him, on at least five grounds :—

1. That the expulsion or suspension was *ultra vires*, i.e. contrary to its by-laws or regulations.
2. That it was not conducted in accordance with the regulations and not in the best interests of the society or club.
3. That the procedure adopted infringed the common law requirements of a fair trial, *e.g.*—
 - (a) that all members entitled to be present at the adjudication did not receive a proper and adequate notice to attend ;
 - (b) that the meeting was improperly convened, improperly constituted, or improperly held ;
 - (c) that the offending member was not given a reasonable opportunity of defending himself.
4. That the proceedings in some way offended against natural justice (*Gray v. Allison*, *ante*, p. 94).
5. That the expulsion or suspension was not honest or *bonâ fide* (*Tantussi v. Molli*, 1886, 2 T. L. R. 731).

EXPULSION OF MEMBER FROM PROFESSIONAL ASSOCIATION

A resolution was passed expelling a member of the British Medical Association. It was held by the Privy Council, on appeal by the member, that “if any body rightly convened and properly composed is burdened with the discharge of some judicial or quasi-judicial duty affecting the rights, liberties, or properties of a subject, makes, as a result of a just and authorised form of

procedure, a decision it has jurisdiction to make, that decision, if legal evidence be given in the course of the proceeding adequate to sustain it, cannot in the absence of some fundamental error be impeached or set aside, save upon the ground that this body was interested, or biased by corruption or otherwise, or influenced by malice in deciding as it did decide. . . . There is no legal evidence to show that both the council and the general meeting did not consider and decide the matter of the appellant's expulsion honestly and fairly, uninfluenced by either fear or favour" (*Thompson v. British Medical Association*, 1924, A. C., p. 778).

RESIGNATION OF MEMBER

In the absence of express regulations to the contrary, there is nothing to prevent a member resigning without the consent of the other members, provided he resigns in the manner provided by the regulations (*Finch v. Oake*, 1896, 1 Ch. 409).

CHAPTER XII

ADMISSION OF THE PRESS

ONE of the first matters that require settlement by the conveners of a meeting, or members of a statutory or other body, is whether the Press should be invited to attend thereat. To a great extent it depends upon the character and objects of the proposed meeting. If the real object of the meeting is not so much the transaction of business, but the inception or furtherance of some cause—*e.g.* religious, social, or political—where the widest publicity is sought, there can be no doubt that the presence of the Press is a valuable adjunct to the meeting; in fact, the report of the meeting often promotes the object of the meeting more than the meeting itself. Again, where public money or the public welfare is concerned, it is essential that the public should be represented by the Press.

The Press is generally excluded at committee meetings, where the real work of a body is generally done. The Local Authorities (Admission of Press to Meetings) Act, 1908, provides that certain committees of local authorities (*e.g.* those for education) shall admit the Press to their meetings (see *post*, p. 331); further, it is much better for information to be obtained through the usual channels at public meetings than for garbled reports or *ex parte* statements to be communicated to the newspapers by irresponsible members; in fact, unless there is unanimity of opinion against their admission, it is preferable to admit the representatives of the Press, otherwise there is almost inevitably a "leakage" of information of an imperfect character.

On the other hand, it is often desirable to exclude the Press when business rather than propaganda work is the object of the meeting, especially when the deliberations of that meeting are reported to a parent body or society to whose meetings the Press is invited. The presence of the Press often retards the progress and business of the meeting, since members are apt to indulge in talk rather than engage in business, more particularly when elections are imminent,

and there is on such occasions a natural tendency to play to the gallery *viâ* the newspapers. Moreover, there are times when matters of a confidential or delicate nature, or plans that are immature or undeveloped of such a nature that they should in the first instance be discussed *in camerâ*, are being considered, and the presence of the Press would naturally prevent free and open discussion.

When it has been decided to admit the Press, due and proper notice should be sent to the editors of the newspapers concerned, and it facilitates the performance of the arduous duties of reporters if the agenda is sent to them at the same time as to the members, together with copies of the reports of the various committees which will be under consideration at the meeting. Proper accommodation should be provided, so that the Press can conveniently see and hear the speakers. If it is a public meeting, the secretary or other official should see that the Press is provided with a correct list of the names of the speakers and prominent people present, and that they are supplied with all reasonable information concerning the proceedings.

In *Mayor &c. of Tenby v. Mason* (1908, 1 Ch. 457) the defendant, a burgess and ratepayer of a town, asserted his right to be present at meetings of the council of the borough (other than committee meetings) in his capacity of (1) ratepayer of the borough; (2) reporter of a newspaper owned by him and published in that town; and, in the alternative, as a member of the public. The corporation of the town claimed a declaration of the council's right to exclude persons not members of the council (which the defendant was not) from their meetings; and for an injunction restraining the defendant from trespassing and being present at meetings of the council. It was held that a meeting of the council of a municipal corporation was not a public meeting in the sense that any member of the public had a right to attend. That there was no ground for implying against a municipal corporation a right which was not expressed in any statute nor supported by any authority; and that the defendant had therefore no such right as was asserted by him either as a burgess or as a member of the public; nor had he the right to attend as a newspaper reporter without the express

or implied permission of the council. This decision has been greatly modified by the Local Authorities (Admission of the Press to Meetings) Act, 1908, which provides that representatives of the Press shall be admitted to the meetings of every local authority, but such representatives may be excluded in special circumstances when the majority of the members by express resolution consider such exclusion is advisable in the public interest (see *post*, p. 331).

NEWSPAPER REPORTS

Formerly reports of public meetings at common law had no privilege (*Purcell v. Sowler*, 1877, 2 C. P. D. 215). Now by Section 4 of The Law of Libel Amendment Act, 1888, it is enacted that a fair and accurate report published in any newspaper of the proceedings of a public meeting or (except where neither the public nor any newspaper reporter is admitted) of any meeting of a local authority, or any notice or report published at the request of any Government office or department shall be privileged, unless it shall be proved that such report was published maliciously. But this protection is of no avail if the defendant has refused to insert in the newspaper complained of a reasonable letter of explanation or contradiction by, or on behalf of, the plaintiff, nor is it available to protect fair and accurate reports of statements made to the editors of newspapers by private persons as to the conduct of a public officer (*Davis v. Shepstone*, 1886, 11 App. Cas. 187). Neither is this protection available if the report is published with malice, indecency, or is blasphemous. Section 1 defines a "newspaper, *inter alia*, as a paper containing public news published at intervals not exceeding 26 days between the publication of any two such papers."

A public meeting is defined as any meeting *bonâ fide* and lawfully held for a lawful purpose, and for the furtherance or discussion of any matter of public concern, whether the admission thereto be general or restricted. The matter reported must be of public concern and its publication for the public benefit, and reports of meetings of companies would therefore not be included.

PART II

COMPANY MEETINGS

I.—CHARTERED AND STATUTORY COMPANIES.

II.—LIMITED COMPANIES.

(a) DIRECTORS.

(b) SHAREHOLDERS.

CHAPTER XIII

CHARTERED AND STATUTORY COMPANIES

NO corporation exists without the King's consent, and in modern times the power of incorporation residing in the King is exercised either by granting of a charter of incorporation, which is part of the Crown's prerogative, *e.g.* to municipal corporations or chartered companies; or by Act of Parliament, *e.g.* to *statutory* companies governed by the Companies Clauses Acts, 1845-1889 (which include the Acts of 1845, 1863, 1869, 1888, 1889),* or companies governed by the Companies Act, 1929.

Companies may therefore be incorporated by—

1. ROYAL CHARTER, *i.e.* *chartered* companies, *e.g.* the Bank of England (1694).
2. SPECIAL ACT OF PARLIAMENT, *i.e.* *statutory* companies, *e.g.* the Midland Railway Company (now amalgamated in the London Midland and Scottish Railway), governed by the Companies Clauses Acts, 1845-1889, and 'Railway Act, 1921.
3. THE COMPANIES ACT, 1929, *i.e.* *limited* companies, *e.g.* Marconi's Wireless Telegraph Company, Limited.

CHARTERED COMPANIES

“At Common Law a corporation created by the King's Charter has *primâ facie*, and has been known to have ever since Sutton's Hospital Case (1613, 10 Rep. 13), the power to do with its property all such acts as an ordinary person can do, and to bind itself to such contracts as an ordinary person can bind himself to; and even if by the Charter creating the corporation the King imposes some direction which would have the effect of limiting the natural capacity of the body of which he is speaking, the Common Law has always held that the direction of the King might be

* Hereinafter referred to as the Acts of 1845 to 1889.

enforced 'through the Attorney-General; but although it might contain an essential part of the so-called bargain between the Crown and the corporation, that did not at law destroy the legal power of the body which the King had created" (*Baroness Wenlock v. River Dee Co.*, 1887, 36 Ch. D., at p. 685).

The Chartered Companies Act, 1837, Section 4, provided that members of such corporations were individually liable in their persons and property for the debts, contracts, engagements, and liabilities of such company or body to such extent only per share as should be declared and limited in and by the Letters Patent creating the company. Previous to this Act the Crown had no power in incorporating to attach liability to the individual members of the corporation.

Meetings of chartered companies are governed and controlled by the charter of the corporation, together with the by-laws, standing orders, or regulations which the corporation has power to make, and the procedure governing meetings of chartered companies is in many respects similar to the law and practice applicable to corporations.

STATUTORY COMPANIES

Most companies are governed by the Companies Act, 1929. There are, however, many companies, especially those relating to public utilities, *e.g.* railways, docks, harbours, water works, gas works, electric light, and transport undertakings, which are regulated by special Acts of Parliament; these are usually called Statutory Companies, and sometimes Special Act Companies.

The special Act corresponds to the memorandum of association of limited companies (which are governed by the Act of 1929); and the Companies Clauses Acts, 1845 to 1889, correspond to their articles of association.

The Acts of 1845 to 1889 thus ensure uniformity in the internal management of statutory companies as regards capital, members, government, and meetings. Such statutory companies are authorised by special Act to execute undertakings of a public nature, including rights which otherwise

they would be unable to exercise, *e.g.* the compulsory interference with the rights of private property. Further, the Acts of 1845 to 1889 avoid the necessity of repeating statutory provisions in each special Act. On the other hand, Section 5 of the Act of 1845 provides that the special Act may incorporate certain provisions only of the Acts of 1845 to 1889, with or without modification. The special Act, therefore, generally provides exclusively for the special powers of statutory companies and leaves all matters of internal management to be dealt with under the provisions of the Acts of 1845 to 1889. Departure from these provisions is rarely authorised by the special Act.

The shareholders of statutory companies are sometimes called "proprietors."

Section 124 of the Act of 1845 provides power for making by-laws :—

1. For the purpose of regulating the conduct of the officers and servants of the company ; and
2. For providing for the due management of the affairs of the Company.

Provided that such by-laws are not repugnant to :—

1. The laws of that part of the United Kingdom where the same are to have effect ;
2. The provisions of the Companies Clauses Acts, 1845 to 1889 ; or
3. The special Act of the Company.

Some Characteristics of Statutory Companies

1. Compulsory powers.—Most of these statutory companies are vested with the power to :—

- (i) Purchase land or interfere with private property without the owner's consent.
- (ii) Commit what, but for such statutory provisions, would amount to nuisances.

2. Unalterable regulations.—Statutory companies are regulated by the Acts of 1845 to 1889, which regulation they can neither alter nor dispense with save as is provided

for in the special Act. Companies under the Act of 1929 can, of course, alter their regulations, *i.e.* their articles.

3. Liability.—In statutory companies the liability is limited to the nominal amount of shares held, but Section 36 of the Act of 1845 provides that if execution is levied against the company and there cannot be found sufficient whereon to levy such execution, then such execution may be issued against any of the shareholders to the extent of their shares in the capital of the company not then paid up.

4. Rights of members at general meetings.—These include some direct control over their directors, *e.g.* :—

- (i) Power to vary the number of directors when authorised by special Act (Act of 1845, Section 82).
- (ii) Choice and removal of directors (Section 83).
- (iii) Powers of company exercised by the directors, other than those provided for by the special Act or the Acts of 1845 to 1889, are subject to the control and regulation of any general meeting (Section 90).

5. Directors.—Provision is made for a permanent and deputy chairman of directors (Section 93) and for the retirement of directors in rotation (Section 88).

THE COMPANIES CLAUSES CONSOLIDATION ACT, 1845

RAILWAY and other important companies which want to acquire or interfere with private property compulsorily, or to commit acts amounting to nuisances, must be incorporated by special Act of Parliament. Many of these companies are governed in part by the Act of 1845, which, *inter alia*, contains the following provisions relating to the procedure and conduct of their meetings, unless otherwise varied by their own special Acts.

1. GENERAL MEETINGS

Ordinary meetings to be half-yearly.

66. The first general meeting of the shareholders of the company shall be held within the *prescribed time* or, if no time be prescribed, within one month after the passing of the special Act, and the future general meetings shall be held at the prescribed periods, and if no periods be prescribed, in the months of February and August in each

year, or at such other stated periods as shall be appointed for that purpose by an order of a general meeting; and the meetings so appointed to be held as aforesaid shall be called "ordinary meetings"; and all meetings, whether ordinary or extraordinary, shall be held in the prescribed place, if any, and if no place be prescribed, then at some place to be appointed by the directors.

An agreement not in itself invalid, made by the majority of the shareholders, cannot be rescinded by resolutions passed by persons afterwards becoming shareholders, although they may then constitute the majority (*G.W.R. Co. v. Birmingham &c. R. Co.*, 1848, 2 Ph. 597).

Prescribed time.—The Act of 1845, Section 2, provides:—The word "prescribe" shall be construed to refer to such matter as shall be prescribed or provided for in the special Act.

Business at ordinary meetings.

67. No matters, except such as are *appointed by this or the special Act* to be done at an ordinary meeting, shall be transacted at any such meeting, unless special notice of such matters have been given in the advertisement convening such meeting.

Appointed by this Act.—See Sections 83 and 101, *post*.

A resolution passed when a company is not a going concern and only exists for the purpose of being wound up is invalid; remuneration for past services of directors cannot be voted at an ordinary general meeting unless special notice be given of the intention to propose such a resolution (*Hutton v. West Cork R. Co.*, 1883, 23 Ch. D., at p. 659).

II. EXTRAORDINARY MEETINGS

68. Every general meeting of the shareholders, other than an ordinary meeting, shall be called an "extraordinary meeting"; and such meetings may be convened by the directors at such times as they think fit.

See Table A, Clauses 40 and 41, *post*.

A resolution altering articles in order that a company may reduce its capital, cannot be passed at the same

meeting at which a resolution for reduction of capital is passed (*re Oregon Mortgage Co.*, 1910, S. C. 964).

Business at extraordinary meetings.

69. No extraordinary meeting shall enter upon any business not set forth in the notice upon which it shall have been convened.

Notices must be reasonably sufficient. It is not enough to state that remuneration is to be allowed to the directors without stating the amount, if such amount is large (*Baillie v. Oriental Telephone Co.*, 1915, 1 Ch. 503). Apparently the invalidity of such a notice may be waived when *all* the members are present (*re Oxted Motor Co.*, 1921, 3 K. B. 32).

Extraordinary meetings may be required by shareholders.

70. It shall be lawful for the prescribed number of shareholders holding in the aggregate shares to the prescribed amount, or where the number of shareholders or amount of shares shall not be prescribed, it shall be lawful for twenty or more shareholders holding in the aggregate not less than one-tenth of the capital of the company, by writing under their hands, at any time to require the directors to call an extraordinary meeting of the company ; and such requisition *shall fully express* the object of the meeting required to be called, and *shall be left* at the office of the company, or given to at least three directors, or left at their last or usual places of abode ; and forthwith, upon the receipt of such requisition, the directors shall convene a meeting of the shareholders ; and if for twenty-one days after such notice the *directors fail* to call such meeting, the *prescribed number*, or such other number as aforesaid, of shareholders qualified as aforesaid, may call such meeting by giving fourteen days' public notice thereof.

Shall fully express, *i.e.* the meeting cannot enter upon any business not set forth in the notice upon which it shall have been convened (Section 69, *ante* ; *Isle of Wight R. Co. v. Tahourdin*, 1883, 25 Ch. D. 330).

Shall be left, *i.e.* directory, not imperative (*Foss v. Harbottle*, 1843, 2 Hare at p. 495).

The directors fail.—Where the directors fail to issue a notice, or issue a notice which does not properly comply with the requisition to call a meeting, the requisitioners are justified in calling a meeting themselves (*Isle of Wight R. Co. v. Tahourdin*, *supra*).

The prescribed number, i.e. prescribed by the company's special Act.

III. CONVENING MEETINGS

Notice of Meetings.

71. *Fourteen days' public notice at the least of all meetings, whether ordinary or extraordinary, shall be given by advertisement, which shall specify the place, the day, and the hour of meeting ; and every notice of an extraordinary meeting, or of an ordinary meeting, if any other business than the business hereby or by the special Act appointed for ordinary meetings is to be done thereat, shall specify the purpose for which the meeting is called.*

Fourteen days' public notice, i.e. fourteen clear days, fourteen days exclusive of day of notice and day of meeting ; see ante, p. 17.

Purpose, i.e. whole purpose. The tests laid down in Kaye v. Croydon Tramways (1898, 1 Ch. 358) as to the sufficiency of notice were :—

1. A notice must fairly disclose the purpose of the meeting and not mislead those to whom it is addressed.
2. The notice must be in language that can be understood by ordinary people and must give a fair and candid and reasonable explanation of the purpose for which the meeting is summoned. Sections 138 and 139 provide that all notices must be by advertisement in a newspaper, signed by two directors and the treasurer or secretary of the company.

An agreement made by a company cannot be rescinded by resolutions passed subsequently, although owing to transfers of shares the majority of the shareholders desire the rescission (*Mercantile Investment Co. v. International Co., post, p. 139*).

IV. QUORUM

Quorum for a general meeting.

72. In order to constitute a meeting (whether ordinary or extraordinary) there shall be present, either personally or by proxy, the prescribed quorum ; and if no quorum be prescribed, then share-

holders holding in the aggregate *not less than one twentieth* of the capital of the company, and being in number not less than one for every five hundred pounds of such required proportion of capital, unless such number would be more than twenty, in which case twenty shareholders, holding not less than one twentieth of the capital of the company, shall be the quorum ; and if within one hour from the time appointed for such meeting the said quorum be not present, no business shall be transacted at the meeting other than the declaring of a dividend, in case that shall be one of the objects of the meeting ; but such meeting shall, except in the case of a meeting for the election of directors, hereinafter mentioned, be held to be adjourned *sine die*.

If the total number of shares issued represents less than the amount of capital required to be represented at a meeting, no valid meeting can be held (see *re Skegness Tramways*, 1888, 41 Ch. D. 225).

V. CHAIRMAN

Chairman at general meetings.

73. At every meeting of the company one or other of the following persons shall preside as chairman : that is to say, the chairman of the directors, or in his absence the deputy chairman, if any, or in the absence of the chairman and deputy chairman some one of the directors of the company to be chosen for that purpose by the meeting ; or in the absence of the chairman and the deputy chairman, and of all the directors, any shareholder to be chosen for that purpose by a majority of the shareholders present at such meeting.

VI. ADJOURNMENT OF MEETINGS

Business at meetings and adjournments.

74. The shareholders present at any such meeting shall proceed in the execution of the powers of the company with respect to the matters for which such meeting shall have been convened, and those only ; and every such meeting may be adjourned from time to time and from place to place ; and no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which such adjournment took place.

The power to adjourn a meeting is in the hands of the meeting, *i.e.* a majority of those present.

VII. VOTING

Votes of shareholders.

75. At all general meetings of the company every shareholder shall be entitled to vote according to the prescribed scale of voting, and where no scale shall be prescribed every shareholder shall have one vote for every share up to ten, and he shall have an additional vote for every five shares beyond the first ten shares held by him up to one hundred, and an additional vote for every ten shares held by him beyond the first one hundred shares: Provided always that no shareholder shall be entitled to vote at any meeting unless he shall have paid all the calls then due upon the shares held by him.

See *post*, *Menier v. Hooper's Telegraph Co.* (p. 133); *Burland v. Earle* (p. 125); *Cook v. Deeks* (p. 151); *Alexander v. Automatic Telephone Co.* (p. 133); *Baillie v. Oriental Telephone Co.* (p. 133); *Pender v. Lushington* (p. 223); *Foss v. Harbottle* (p. 129), as to powers of majorities and rights of minorities.

Manner of voting.

76. The votes may be given either personally or by proxies being shareholders, authorised by writing according to the form in the Schedule (F) to this Act, or in a form to the like effect, under the hand of the shareholder nominating such proxy, or, if such shareholder be a corporation, then under their common seal; and every proposition at any such meeting shall be determined by the majority of votes of the parties present, including proxies, the chairman of the meeting being entitled to vote, not only as a principal and proxy, but to have a casting vote if there be an equality of votes.

[Provided that where the shareholder is a body corporate, the proxy may be any member of such body, though not personally a shareholder in the company (Section 2 of Companies Clauses Consolidation Act, 1888, as amended by Section 2 of the Act of 1889).]

Form of proxy.—Schedule F to the Act of 1845.

A. B., one of the proprietors of "THE COMPANY," doth hereby appoint C. D., of _____, to be the proxy of the said A. B., in his absence to vote in his name upon any matter relating to the undertaking proposed at the meeting of the proprietors of the said company to be held on the _____ day of _____ next, in such manner as he

the said C. D. doth think proper. In witness whereof the said A. B. hath hereunto set his hand [*or, if a corporation, say the common seal of the corporation*] the day of

But where a corporation is a foreign corporation and has no seal, proxies can be appointed by a document signed by an agent (*Colonial Gold Reef v. Free State Rand*, 1914, 1 Ch. 382).

Where attestation is essential to the validity of a proxy, unattested proxies must be rejected (*Harben v. Phillips*, 1883, 23 Ch. D. 14).

A proxy stamped to vote at *any* ordinary or extraordinary meeting is valid (*Isaacs v. Chapman*, 1915, 32 T. L. R. 183), but a proxy to vote "at the next election" is not (*R. v. McInerney*, 1891, 30 L. R. Ir. 49).

Regulations as to proxies.

77. No person shall be entitled to vote as a proxy unless the instrument appointing such proxy has been transmitted to the secretary of the company the prescribed period, or, if no period be prescribed, not less than forty-eight hours before the time appointed for holding the meeting at which such proxy is to be used.

Proxy papers used for one meeting only must be stamped with a proxy stamp, which may be adhesive, otherwise they are invalid (Stamp Act, 1891, Section 80). If for more than one meeting or for voting "at the next election," the form must bear a 10s. stamp.

Proxies lodged after the date of the original meeting, but before the adjourned meeting, are invalid (*McLaren v. Thomson*, 1917, 2 Ch. 261). See *post*, p. 238.

Votes of joint shareholders.

78. If several persons be jointly entitled to a share, the person whose name stands first in the register of shareholders as one of the holders of such share shall, for the purpose of voting at any meeting, be deemed the sole proprietor thereof; and on all occasions the vote of such first-named shareholder, either in person or by proxy, shall be allowed as the vote in respect of such share, without proof of the concurrence of the other holders thereof.

Votes of lunatics and minors &c.

79. If any shareholder be a lunatic or idiot, such lunatic or idiot may vote by his committee ; and if any shareholder be a minor, he may vote by his guardian or any one of his guardians ; and every such vote may be given either in person or by proxy.

Proof of a particular majority of votes required only in the event of a poll being demanded.

80. Whenever in this or the special Act the consent of any particular majority of votes at any meeting of the company is required in order to authorise any proceeding of the company, such particular majority shall only be required to be proved in the event of a poll being demanded at such meeting ; and if such poll be not demanded, then a declaration by the chairman that the resolution authorising such proceeding has been carried, and an entry to that effect in the book of proceedings of the company shall be sufficient authority for such proceeding without proof of the number or proportion of votes recorded in favour of or against the same.

Where articles give the right to demand a poll to "members holding" at least a specified number of shares, joint holders of the specified number of shares may demand a poll without the support of any other member (*Siemens Bros. v. Burns*, 1918, 2 Ch. 324).

When two resolutions before a meeting have been separately voted upon and a poll has been demanded, a separate poll must be directed to be taken on each resolution (*Blair Open Hearth Co. v. Reigart*, 1913, 108 L. T. 665).

Proxies had been given to A not a member of the company in contravention of the articles. A in fact voted and no objection was taken at the time. The articles also provided that votes wrongly admitted at a poll must be objected to at the meeting at which the poll is held. It was held that the validity of these votes could not afterwards be disputed (*Colonial Gold Reef v. Free State Rand*, 1914, 1 Ch. 382).

VIII. APPOINTMENT AND ROTATION OF DIRECTORS

Number of directors.

81. The number of directors shall be the prescribed number [*i.e.* that prescribed by the special Act. This provision is directive only, and directors may usually act below their pre-

scribed number unless the special Act contains negative words, *e.g.* "not less than five nor more than seven"].

Power to vary number of directors.

82. Where the company shall be authorised by the special Act to increase or to reduce the number of directors it shall be lawful for the company from time to time, in general meeting, after due notice for that purpose, to increase or to reduce the number of directors within the prescribed limits, if any, and to determine the order of rotation in which such reduced or increased number shall go out of office, and what number shall be a quorum at their meetings.

Election of directors.

83. The directors appointed by the special Act shall, unless thereby otherwise provided, continue in office until the first ordinary meeting to be held in the year next after that in which the special Act shall have passed ; and at such meeting the shareholders present, personally or by proxy, may either continue in office the directors appointed by the special Act, or any number of them, or may elect a new body of directors, or directors to supply the places of those not continued in office, the directors appointed by the special Act being eligible as members of such new body ; and at the first ordinary meeting to be held every year thereafter the shareholders present, personally or by proxy, shall elect persons to supply the places of the directors then retiring from office, agreeably to the provisions hereinafter contained ; and the several persons elected at any such meeting, being neither removed nor disqualified, nor having resigned, shall continue to be directors until others are elected in their stead, as hereinafter mentioned.

Existing directors continued on failure of meeting for election of directors.

84. If at any meeting at which an election of directors ought to take place the prescribed quorum shall not be present within one hour from the time appointed for the meeting, no election of directors shall be made, but such meeting shall stand adjourned to the following day at the same time and place ; and if at the meeting so adjourned the prescribed quorum be not present within one hour from the time appointed for the meeting the existing directors shall continue to act and retain their powers until new directors be appointed at the first ordinary meeting of the following year.

Qualification of directors.

85. No person shall be capable of being a director unless he be a shareholder, nor unless he be possessed of the prescribed number, if any, of shares ; and no person holding an office or place of trust

or profit under the company, or interested in any contract with the company, shall be capable of being a director ; and no director shall be capable of accepting any other office or place of trust or profit under the company, or of being interested in any contract with the company, during the time he shall be a director ; and see S. 87 (*post*).

A director is liable to individual creditors under Section 36 up to the prescribed number of shares, although no shares have been allotted to him (*Portal v. Emmens*, 1876, 1 C. P. D. 664).

If a director is interested in any contract (*i.e.* in regard to the prosecution of its enterprise), he cannot enforce such contract against the company (*Aberdeen R. Co. v. Blaikie*, 1853, 1 Macq. 461) nor can his assignees (*Flanagan v. G.W.R. Co.*, 1868, L. R., 7 Eq. 116).

Apparently acting as a banker would not disqualify (*Sheffield &c. R. Co. v. Woodcock*, 1841, 7 M. & W. 574).

Cases in which office of director shall become vacant.

86. If any of the directors at any time subsequently to his election accept or continue to hold any office or place of trust or profit under the company, or be either directly or indirectly concerned in any contract with the company, or participate in any manner in the profits of any work to be done for the company, or if such director at any time cease to be a holder of the prescribed number of shares in the company, then in any of the cases aforesaid the office of such director shall become vacant, and thenceforth he shall cease from voting or acting as a director.

Apparently this qualification will not be lost by a mortgage of the shares, if possession of them is retained by the director (*Cumming v. Prescott*, 1837, 2 Y. & C. Ex. 488).

Shareholder of company not disqualified by reason of contracts.

87. Provided always that no person, being a shareholder or member of any incorporated joint stock company, shall be disqualified or prevented from acting as a director by reason of any contract entered into between such joint stock company and the company incorporated by the special Act ; but no such director being a shareholder or member of such joint stock company shall vote on any question as to any contract with such joint stock company.

Rotation of directors.

88. The directors appointed by the special Act, and continued in office as aforesaid, or the directors elected to supply the places of those retiring as aforesaid shall, subject to the provision hereinbefore contained for increasing or reducing the number of directors, retire from office at the times and in the proportions following, the individuals to retire being in each instance determined by ballot among the directors, unless they shall otherwise agree: that is to say—

At the end of the first year after the first election of directors, the prescribed number, and if no number be prescribed, one third of such directors, to be determined by ballot among themselves, unless they shall otherwise agree, shall go out of office.

At the end of the second year the prescribed number, and if no number be prescribed, one half of the remaining number of such directors, to be determined in like manner, shall go out of office.

At the end of the third year the prescribed number, and if no number be prescribed, the remainder of such directors, shall go out of office.

And in each instance the places of the retiring directors shall be supplied by an equal number of qualified shareholders; and at the first ordinary meeting in every subsequent year the prescribed number, and if no number be prescribed one third of the directors, being those who have been longest in office, shall go out of office, and their places shall be supplied in like manner; nevertheless, every director so retiring from office may be re-elected immediately or at any future time, and after such re-election shall, with reference to the going out by rotation, be considered as a new director: Provided always that if the prescribed number of directors be some number not divisible by three, and the number of directors to retire be not prescribed, the directors shall in each case determine what number of directors, as nearly one third as may be, shall go out of office, so that the whole number shall go out of office in three years.

Supply of occasional vacancies in office of directors.

89. If any director die, or resign, or become disqualified or incompetent to act as a director, or cease to be a director by any other cause than that of going out of office by rotation as aforesaid, the remaining directors, if they think proper so to do, may elect in his place some other shareholder, duly qualified, to be a director; and the shareholder so elected to fill up any such vacancy shall continue in office as a director so long only as the person in whose place he shall have been elected would have been entitled to continue if he had remained in office.

It was held in *Channel Collieries Trust v. Dover &c. R. Co.* (1914, 2 Ch. 506) that if there is only *one* remaining

director he is entitled to meet and fill up casual vacancies under this section.

IX. POWERS OF DIRECTORS

Powers of the company to be exercised by the directors.

90. The directors shall have the management and superintendence of the affairs of the company, and they may lawfully exercise all the powers of the company, except as to such matters as are directed by this or the special Act to be transacted by a general meeting of the company, but all the powers so to be exercised shall be exercised in accordance with and subject to the provisions of this and the special Act; and the exercise of all such powers shall be subject also to the control and regulation of any general meeting specially convened for the purpose, but not so as to render invalid any act done by the directors prior to any resolution passed by such general meeting.

These powers include granting of a gratuity to servants of the company, *e.g.* one week's extra wages to each deserving one (*Hampson v. Price's Patent Candle Co.*, 1876, 45 L. J. Ch. 437), but not granting compensation for loss of office to past officials, nor can such compensation be voted at a general meeting (*Hutton v. West Cork R. Co.*, 1883, 23 Ch. D. 654). The directors have no power to present a petition for winding up without the authority of the shareholders at a general meeting (*re Galway &c. Tramways*, *post*, p. 179).

Powers of the company not to be exercised by the directors.

91. Except as otherwise provided by the special Act, the following powers of the company, that is to say, the choice and removal of the directors, except as hereinbefore mentioned, and the increasing or reducing of their number where authorised by the special Act, the choice of auditors, the determination as to the remuneration of the directors, auditors, treasurer, and secretary, the determination as to the amount of money to be borrowed on mortgage, the determination as to the augmentation of capital, and the declaration of dividends, shall be exercised only at a general meeting of the company.

The determination as to the remuneration of the secretary is to be exercised only at a general meeting. But it is no answer to an action by the secretary that no

determination as to such salary had ever been exercised at any general meeting of the company (*Bill v. Darenth Valley R. Co.*, 1856, 26 L. J. Ex. 81). A general meeting has power to remove directors subject to proper notice of meeting, and also to fill casual vacancies if the directors refuse to do so (*Isle of Wight v. Tabourdin*, *post*, p. 198).

The directors can decide within limits when and how dividends duly declared by a general meeting shall be paid (*Thairlwall v. G.N.R. Co.*, 1910, 2 K. B. 509).

X. PROCEEDINGS OF DIRECTORS

Meetings of directors.

92. The directors shall hold meetings at such times as they shall appoint for the purpose, and they may meet and adjourn as they think proper from time to time and from place to place, and at any time any two of the directors may require the secretary to call a meeting of the directors, and in order to constitute a meeting of directors there shall be present at the least the prescribed quorum, and when no quorum shall be prescribed there shall be present at least one third of the directors; and all questions at any such meeting shall be determined by the majority of votes of the directors present, and in case of an equal division of votes, the chairman shall have a casting vote in addition to his vote as one of the directors.

In order to bind the company the individuals who make up the quorum must act conjointly as a board, and a contract under the seal of the company is not valid unless the seal is affixed with the authority of the directors meeting together as a board (*D'Arcy v. Tamar &c. R. Co.*, 1886, L. R., 2 Ex. 158).

Permanent chairman of directors.

93. At the first meeting of the directors held after the passing of the special Act, and at the first meeting of the directors held after each annual appointment of directors, the directors present at such meeting shall choose one of the directors to act as chairman of the directors for the year following such choice, and shall also if they think fit choose another director to act as deputy-chairman for the same period, and if the chairman or deputy chairman die, or resign, or cease to be a director or otherwise become disqualified to act, the directors present at the meeting next after the occurrence

of such vacancy shall choose some other of the directors to fill such vacancy; and every such chairman or deputy chairman so elected as last aforesaid shall continue in office so long only as the person in whose place he may be so elected would have been entitled to continue if such death, resignation, removal, or disqualification had not happened.

Occasional chairman of directors.

94. If at any meeting of the directors neither the chairman nor deputy-chairman be present, the directors present shall choose some one of their number to be chairman of such meeting.

Committee of directors. Powers of committee.

95. It shall be lawful for the directors to appoint one or more committees, consisting of such number of directors as they think fit within the prescribed limits, if any, and they may grant to such committees, respectively, power on behalf of the company to do any acts relating to the affairs of the company which the directors could lawfully do, and which they shall from time to time think proper to entrust to them.

The committee must act together, and it is not competent for its members to apportion duties amongst themselves (*Cook v. Ward*, 1877, 2 C. P. D. 255).

96. The said committees may meet from time to time, and may adjourn from place to place, as they think proper, for carrying into effect the purposes of their appointment; and no such committee shall exercise the powers entrusted to them except at a meeting at which there shall be present the prescribed quorum, or, if no quorum be prescribed, then a quorum to be fixed for that purpose by the general body of directors; and at all meetings of the committees one of the members present shall be appointed chairman; and all questions at any meeting of the committee shall be determined by a majority of votes of the members present, and in case of an equal division of votes the chairman shall have a casting vote, in addition to his vote as a member of the committee.

Contracts by committee or directors, how to be entered into.

97. The powers which may be granted to any such committee to make contracts, as well as the power of the directors to make contracts on behalf of the company, may lawfully be exercised as follows: that is to say—

With respect to any contract which, if made between private

persons, would be by law required to be in writing, and under seal [e.g. a lease for more than three years or a conveyance of land], such committee or the directors may make such contract on behalf of the company in writing, and under the common seal of the company, and in the same manner may vary or discharge the same ;

With respect to any contract which, if made between private persons, would be by law required to be in writing, and signed [agreement to let or sell lands, Statute of Frauds, Section 3] by the parties to be charged therewith, then such committee or the directors may make such contract on behalf of the company in writing, signed by such committee or any two of them, or any two of the directors, and in the same manner may vary or discharge the same ;

With respect to any contract which, if made between private persons, would by law be valid although made by parol only, and not reduced into writing, such committee or the directors may make such contract on behalf of the company by parol only, without writing, and in the same manner may vary or discharge the same ;

[The authority of the directors will be presumed in the absence of evidence to the contrary where the company have had the benefit of the contract, *Lowe v. L. & N.W.R. Co.*, 1852, 21 L. J., Q. B. 361.]

And all contracts made according to the provisions herein contained shall be effectual in law, and shall be binding upon the company and their successors, and all other parties thereto, their heirs, executors, or administrators, as the case may be ; and on any default in the execution of any such contract, either by the company or any other party thereto, such actions or suits may be brought, either by or against the company, as might be brought had the same contracts been made between private persons only.

Proceedings to be entered in a book, and to be evidence.

98. The directors shall cause notes, minutes, or copies, as the case may require, of all appointments made or contracts entered into by the directors, and of the orders and proceedings of all meetings of the company, and of the directors and committees of directors, to be duly entered in books, to be from time to time provided for the purpose, which shall be kept under the superintendence of the directors ; and every such entry shall be signed by the chairman of such meeting ; and such entry, so signed, shall be received as evidence in all courts and before all judges, justices, and others, without proof of such respective meetings having been duly convened or held, or of the persons making or entering such orders or proceedings being shareholders, or directors, or members of committee respectively, or of the signature of the chairman, or of the

fact of his having been chairman, all of which last-mentioned matters shall be presumed until the contrary be proved.

The minute book may be transcribed or made from rough minutes taken at the time of the meeting (*re* Jennings, 1851, 1 Ir. Ch. R. 236), and the minutes must be signed by the chairman who in fact presided at the meeting, though he may sign at a subsequent meeting (*West London R. Co. v. Barnard*, 1843, 3 Q. B. 873).

Informalities in appointment of directors not to invalidate proceedings.

99. All acts done by any meeting of the directors, or of a committee of directors, or by any person acting as a director, shall, notwithstanding it may be afterwards discovered that there was some defect in the appointment of any such directors or persons acting as aforesaid, or that they or any of them were or was disqualified, be as valid as if every such person had been duly appointed and was qualified to be a director.

An irregular allotment of shares may be validated by this section (*Channel Collieries v. Dover &c. R. Co.*, *ante*, p. 116).

Directors not to be personally liable.

100. No director, by being party to or executing in his capacity of director any contract or other instrument on behalf of the company, or otherwise lawfully executing any of the powers given to the directors, shall be subject to be sued or prosecuted, either individually or collectively, by any person whomsoever; and the bodies or goods or lands of the directors shall not be liable to execution of any legal process by reason of any contract or other instrument so entered into, signed, or executed by them, or by reason of any other lawful act done by them in the execution of any of their powers as directors; and the directors, their heirs, executors, and administrators shall be indemnified out of the capital of the company for all payments made or liability incurred in respect of any acts done by them, and for all losses, costs, and damages which they may incur in the execution of the powers granted to them; and the directors for the time being of the company may apply the existing funds and capital of the company for the purposes of such indemnity, and may, if necessary for that purpose, make calls of the capital remaining unpaid, if any.

Lawfully executing any of the powers.—Where acts have been done honestly by directors within their authority they

cannot generally be made personally liable, though the acts have been attended by bad consequences (*Charitable Corporation v. Sutton*, 1742, 2 Atk., p. 405). But if as agents of the company they exercise its functions for the purpose of improperly alienating its property or otherwise injuring its interests, the company is entitled to sue them and to obtain from them redress (*A.-G. v. Wilson*, 1840, Cr. & Ph. p. 24).

XI. AUDITORS

Election of auditors.

101. Except where by the special Act auditors shall be directed to be appointed otherwise than by the company, the company shall, at the first ordinary meeting after the passing of the special Act, elect the prescribed number of auditors, and if no number is prescribed two auditors, in like manner as is provided for the election of directors; and at the first ordinary meeting of the company in each year thereafter the company shall in like manner elect an auditor to supply the place of the auditor then retiring from office . . . and every auditor elected as hereinbefore provided, being neither removed nor disqualified, nor having resigned, shall continue to be an auditor until another be elected in his stead.

XII. NOTICES

Service by company on shareholders.

136. Notices requiring to be served by the company upon the shareholders may, unless expressly required to be served personally, be served by the same being transmitted through the post directed according to the registered address or other known address of the shareholder, within such period as to admit of its being delivered in the due course of delivery within the period (if any) prescribed for the giving of such notice; and in proving such notice it shall be sufficient to prove that such notice was properly directed, and that it was so put into the post office.

Notice to joint proprietors of shares.

137. All notices directed to be given to the shareholders shall, with respect to any shares to which persons are jointly entitled, be given to whichever of the said persons shall be named first in the register of shareholders; and notice so given shall be sufficient notice to all the proprietors of such share,

Notices by advertisement.

138. All notices required by this or the special Act, or any Act incorporated therewith, to be given by advertisement, shall be advertised in the prescribed newspaper, or if no newspaper be prescribed, or if the prescribed newspaper cease to be published, in a newspaper circulating in the district within which the company's principal place of business shall be situated.

In the absence of evidence that the newspaper circulates in the district, the proceedings of the meeting are invalid (*Swansea Dock Co. v. Levien*, 1851, 20 L. J. Ex. 447).

CHAPTER XIV

THE CONTROL AND GOVERNMENT OF LIMITED COMPANIES

THE POWERS OF MAJORITIES AND RIGHTS OF MINORITIES

THE Act of 1929 provides that certain powers of the company shall be exercised by *special* resolution, *e.g.* alteration of articles ; certain other powers by *extraordinary* resolution, *e.g.* winding up a company voluntarily ; and certain other powers by the company in general meeting, usually by *ordinary* resolution, *e.g.* appointment of auditors. All these powers must be exercised in general meeting, *i.e.* a meeting of the shareholders as a whole, and, except in the case of ordinary resolutions, require a three-fourths majority of such members as, being entitled so to do, vote. Except where the statute otherwise provides, the company may decide in what manner it will exercise any other powers, and usually makes such provision in the articles.

Subject to the above, the general control and government of a limited company is, with certain limitations, which are discussed later, dependent upon the five following principles :—

- I. As expressed by a bare majority of its members in general meeting by resolution. The will of a meeting is formally ascertained by passing a resolution.

The Act of 1929, however, provides that business of a limited company of fundamental or constitutional importance must be sanctioned by a three-fourths majority of such members as, being entitled so to do, vote, since the statute requires that such business, *e.g.* alteration of memorandum or articles, must be authorised by special resolution, Section 117, *post*, p. 213.

- II. A majority, however large, cannot bind a minority, however small, to do that which the constitution

of the company does not authorise it to do (*Burland v. Earle*, 1902, A. C. 83); in case of fraud, the minority is entitled to obtain relief on application to the Court (*Society of Practical Knowledge v. Abbott*, 1840, 2 Beav. 559).

III. Articles usually provide that the directors shall act for the company, in which case the powers of the members in general meeting are very limited. The ordinary business of the company is therefore transacted by the directors; the company exercises its control and does such acts as are reserved to it by the articles or statute and by the votes of a majority at general meetings.

IV. When the directors to whom are delegated the powers of the company are unable to act, then the powers of the directors revert to the company in general meeting (*Baron v. Potter, post*, p. 132).

V. A single shareholder may bring an action on behalf of himself and all other shareholders to restrain the company from doing an illegal or *ultra vires* act, or in cases when the majority acting in bad faith or oppressively are doing a wrong to a minority of shareholders (*Atwool v. Merryweather*, 1867, L. R., 5 Eq. 464*n*). But if an act is only irregular on the part of the directors and is such that the company could ratify it, or if the company has done irregularly what it might have done regularly, a minority cannot obtain the interference of the Court.

1. THE WILL OF A CORPORATION : HOW EXPRESSED

The will of a corporation is expressed by the voice of its members, or a majority of them, at a properly convened meeting. A corporation is an *imperium in imperio* and the majority is supreme, provided it does not act *ultra vires* and conforms to the special provisions of the charter or statute which has brought it into being. A corporation *quâ*

corporation cannot think without meeting, at which meeting its will is expressed by the voice of its members or a majority of them. Where no special provision is made by the constitution of a corporation, the whole is bound by the acts, not only of the major part, but by the major part of those who are present at a regular corporate meeting, whether the number present be a majority of the whole or not (2 Bac. Abr. 269). In the absence of any regulations, a meeting cannot be constituted unless a majority of the members is present (*R. v. Bower*, 1823, 1 B. & C. 492).

The act of the majority of a corporation is in general considered as the act of the whole. Therefore, where a statute empowered a corporate body "at any meeting at which not less than 13 should be present, by writing under their hands, to appoint a treasurer," it was held that an appointment signed by 12, at a meeting of 17, was valid (*Cortis v. Kent Waterworks Company*, 1872, 5 L. J. (O. S.) M. C. 106).

The rule of corporation law that when a duty is delegated to a body of persons, a majority of those persons can act at a meeting does not apply to the case of articles of association of companies incorporated under the Companies Act. A power conferred on "governing directors" was held, on construction, exercisable only by all and not by a majority (*Perrott and Perrott v. Stephenson*, 1934, 1 Ch. 171).

Whatever can be lawfully done by a corporation can be done by the act of the majority of its members (*Gray v. Trinity College, Dublin*, 1910, 1 Ir. R. 370). When duly met, corporate acts may be done by the majority of those constituting the meeting (*R. v. Munday*, 1777, Cowp. 530).

Unless some delegation of powers is made, *e.g.* to directors, no corporate act can be performed in any other manner (*R. v. Varlo*, 1775, Cowp. 248).

A corporation can only do corporate acts at a corporate meeting when—

- i. The corporate meeting has been summoned by the proper authority; in the case of limited companies the proper authority is the directors acting as a

- board (*re* Haycraft Gold Reduction Co., 1900, 2 Ch. 230).
- ii. The corporate meeting has been held upon a notice which gives every member of the corporation a reasonable opportunity of attending (*Mayor, &c. of Merchants of the Staple of England v. Bank of England*, 1887, 21 Q. B. D. 160).

The formal affixing of the common seal sanctifies the expression of the common will of the corporation and accentuates the singleness of the collective person as emphasised by the existence of a common name.

2. RECOGNITION OF MAJORITY AS EQUIVALENT TO THE WHOLE: HOW ESTABLISHED

The recognition of the majority as equivalent to the whole, although so readily allowed to-day, is not an early principle. The *communitas* of the townsmen was first regarded as a mere aggregation of individuals, but the more they acted and were treated as a unit the more natural it appeared to treat them as a collective whole. Until the will of the whole was regarded as a single will it was impossible to regard the group as a distinct legal person. Italy and the Church helped to establish the authority of the *major pars*. It was conceded that the will of the *universitas* could be expressed by the *major pars* of members properly present at a duly convened meeting, if the *major pars* were also the *sanior pars*. Henceforward the shout of the *major et sanior pars* was allowed to drown the shout of the minority. When a minority began at length to be considered as bound by the vote of the majority the *communitas* of the whole body began to show a truer corporateness.

3. PRINCIPLE OF THE SUPREMACY OF THE MAJORITY

The cardinal doctrine that the votes of a majority will bind the whole corporation, *i.e.* the principle of the supremacy of the majority, is clearly enunciated in *N.W. Transportation Co. v. Beatty* (1887, 12 App. Cas. 589, at p. 593): "Unless

some provision to the contrary is to be found in the charter or other instrument by which the company is incorporated, the resolution of a majority of the shareholders duly convened, upon any question with which the company is legally competent to deal, is binding on the minority and consequently upon the company, and every shareholder has a perfect right to vote upon any such question, although he may have a personal interest in the subject matter opposed to or different from the general or particular interests of the company."

Where a statute requires a majority consisting of a certain proportion of votes of persons present at a meeting to render an act valid, there must be the specified proportion of those present actually voting for the act, and those who refuse to take any part in the proceedings cannot be considered as absent (*Re Eynsham*, 1849, 18 L. J. Q. B. 210). Members attending a meeting and refusing to take part in the proceedings may be treated as absent or as not constituting part of the meeting for the purposes as to which they decline to interfere, but this rule does not apply apparently if members present and taking part in the proceedings constitute a majority of those present. "The minority may not treat the majority, remaining present and continuing their dissent, as either absent or assenting, and the minority cannot assume the power of acting by reason of the contumacious refusal to act of the rest of the body" (*Gosling v. Veley*, 1853, 4 H. L. Cas., at p. 722).

4. THE SUPREMACY OF THE MAJORITY AS APPLICABLE TO LIMITED COMPANIES

This cardinal rule of corporation law, that a majority of its members *primâ facie* is entitled to exercise the powers of the corporation, is generally applicable to a company governed by the Companies Act, 1929, with certain limitations and qualifications. A very common limitation is the requirement of a majority of three-fourths of those who, entitled to vote, do vote, in person or by proxy, *e.g.* Section 117 of the Act of 1929, which has reference to extraordinary and

special resolutions, and Section 153 (2), which deals with the power of a company to compromise with members and creditors. As a rule, important changes in the constitution or regulations of a company require a special resolution, *e.g.* alteration of memorandum or articles, so that, with the exception of ordinary business of a company, a bare majority is insufficient. The memorandum and articles commonly give the directors certain exclusive powers, *e.g.* the management of the business and the control of the company; and unless there is express provision to the contrary, a majority of the shareholders present at an ordinary general meeting cannot exercise any direct control over the directors while they act within their powers (*Quin & Axtens v. Salmon*, 1909, A. C. 442). The company may, however, either alter the articles or, if possible, remove the directors and thus ultimately attain its aims. Hence the majority, usually a three-fourths majority, is supreme, and the Court, with some exceptions, will respect any decision it has arrived at and will, on occasion, assist it to enforce its decisions on a recalcitrant minority (*Exeter & Crediton Railway Co. v. Buller*, 1847, 5 Rail. Ca. 211). The majority has a complete discretion in all matters of internal administration, may carry on the affairs of the company as it thinks best, and decide whether its powers shall be delegated, and, if so, to what extent, provided the company does not exceed its powers and conforms to all the regulations governing it. .

Where the management is vested in the directors subject to the regulations prescribed by the company in general meeting, a bare majority of shareholders in general meeting have the right to control the directors in the management of the company so long as they do not affect to control it in a direction contrary to the articles (*Marshall's Valve Gear v. Manning, Wardle & Co.*, 1909, 1 Ch. 267). .

5. RULE IN FOSS *v.* HARBOTTLE

This rule, which governs companies as far as their domestic affairs are concerned, is that the Court will not

generally interfere with the internal affairs of a company where an irregularity has been committed, so long as that irregularity is capable of confirmation by the company. The principle of majority supremacy is laid down in the leading case of *Foss v. Harbottle* (1843, 2 Hare, 461), which held that when an act which is not *ultra vires*, the confirmation of which might be done with the approval of a majority, is done irregularly without such approval, the majority are the only persons who can complain or condone.

Where the wrong complained of is one done to the company and not to an individual shareholder, the Court will not interfere at the suit of any shareholder, whether suing on behalf of himself and all the other shareholders or on behalf of himself alone, if a majority of the company assembled in general meeting could ratify it, unless the majority of the company is using its powers to benefit itself at the expense of the minority or to defraud it.

In *MacDougall v. Gardiner* (1875, 1 Ch. D., at p. 25) it was said: "In my opinion, if the thing complained of is a thing which in substance the majority of the company are entitled to do, or if something has been done irregularly which the majority of the company are entitled to do regularly, or if something has been done illegally which the majority of the company are entitled to do legally, then there can be no use in having a litigation about it, the ultimate end of which is only that a meeting has to be called, and then ultimately the majority gets its wishes."

"It is an elementary principle of the law relating to joint-stock companies that the Court will not interfere with the internal management of companies acting within their powers, and, in fact, has no jurisdiction to do so" (*Burland v. Earle*, 1902, A. C., p. 93). "It is most important that the Court should hold fast to the rule (*i.e.* *Foss v. Harbottle*) upon which it has always acted, not to interfere for the purpose of forcing companies to conduct their business according to the strictest rules, where the irregularity complained of can be set right at any moment" (*Browne v. La Trinidad* (1887, 37 Ch. D., at p. 17). The Court in *Southern Counties Deposit Bank v. Rider & Kirkwood*

(1895, 73 L. T. 374), declined to interfere because a notice convening a meeting was passed at a meeting of the board of directors, at which a quorum was not present, but in *re John T. Clark & Co.* (1911, 48 Sc. L. R. 154), the Court refused to sanction an irregularity even though such irregularity would result in no harm. This latter case had reference to whether or not a three-fourths majority had been obtained in respect of an extraordinary resolution, and as this is governed by statute this case is apparently distinguished from others which follow the rule in *Foss v. Harbottle*.

Nothing connected with internal disputes between the shareholders will the Court interfere with, unless there be something illegal or oppressive or fraudulent, or unless there be something *ultra vires* on the part of the company *quâ* company or on the part of the majority of the company so that they are not fit persons to determine the matter. All other matters must be left to the domestic tribunal constituted by the articles.

The Court declined to interfere where the company had neglected to appoint new directors, such appointment being in the company in general meeting, and also where the chairman refused to grant a poll, since there was nothing to prevent the plaintiff from summoning another meeting and dealing with the matter in that way (*MacDougall v. Gardiner, ante*, p. 130). Where a director voted for a contract in which he was personally interested contrary to the articles, it was held that the contract was invalid, but as the irregularity could be cured by the company in general meeting, the Court refused to interfere (*Foster v. Foster, post*, p. 132).

Where disputes between directors had led to the dereliction of the company's affairs and put the business in jeopardy, the Court appointed a receiver and manager for a limited period to enable the management to be restored to a proper footing (*Stanfield v. Gibbon*, 1925, W. N. 11).

Where a meeting of shareholders had resolved by a majority upon a mode of distribution of surplus assets between preferred and deferred shareholders different from that to which the parties were legally entitled, the Court refused to draw an inference that the shareholders absent

or not represented at the meeting had assented to such mode of distribution (*re* North-Western Argentine R. Co., 1900, 2 Ch. 882).

6. QUALIFICATIONS TO THE PRINCIPLE OF THE SUPREMACY OF THE MAJORITY

Articles are a contract between the members of a company *inter se*, and where a company has delegated its powers and duties to directors and there is a deadlock which prevents the directors fulfilling their duties, the company can then act (*Barron v. Potter*, 1914, 1 Ch. 895), which was followed in *Foster v. Foster* (1916, 1 Ch. 532), where the directors being in the circumstances unable to exercise the powers conferred upon them by the articles, the company in general meeting were held to have power to act.

The cardinal doctrine of the supremacy of the majority is subject to certain qualifications, apart from the principle laid down in *Automatic Self-Cleansing Filter Syndicate v. Cuninghame* (1906, 2 Ch. 34), which held that the resolution of a numerical majority at a meeting of shareholders cannot impose its will upon the directors when the articles have confided to these latter the control of the company's affairs. "Their course is to obtain the requisite majority to remove the directors and put persons in their place who agree to their policy" (*Gramophone &c. Ltd. v. Stanley*, 1908, 2 K. B., p. 98).

Articles are *ultra vires* and inoperative so far as they purport to deprive dissentient shareholders of their statutory rights (*Payne v. Cork Co., Limited*, 1900, 1 Ch. 308).

(1) Control by directors.—In general, however, the control of the management by a company in general meeting is strictly limited. Articles commonly provide that the business of a company is to be managed by directors who may exercise all the powers of the company, subject to such regulations, not being inconsistent with the provisions of the articles, as may be prescribed by the company in general meeting (see *post*, p. 157).

(2) **A majority cannot sanction any act which is ultra vires the company or is illegal, and it cannot be validated even by the unanimous vote of the whole company** (*Browne v. Monmouthshire Railway Co.*, 1851, 13 Beav. 32; *Ashbury Railway Carriage Co. v. Riche*, 1875, L. R., 7 H. L., 653).

(3) **A majority is not entitled to practise a fraud upon the minority.**—In *Menier v. Hooper's Telegraph Works* (1874, L. R., 9 Ch. 350), the defendants, who held a majority of the shares in the company, made an arrangement by which the assets of the company were, in effect, divided between them to the exclusion of the minority. In such a case, the minority had the right to have their share of the benefits ascertained for them in the best way in which the Court would do it, and given to them. See also *Cook v. Deeks* (1916, 1 A. C. 554); *Harris v. Harris, Ltd.* (1936, S. C. 183). An act, however, may sometimes be fraudulent in its inception and yet be capable of ratification; and if the majority in such a case are not implicated in any way in the fraud, and choose to sanction it, the Court will not interfere provided such act was not *ultra vires* (*Clinch v. Financial Corporation*, 1868, L. R. 5 Eq., at p. 482).

But the Court refused to restrain a majority from selling the assets of the company for a fair price payable in cash to a company formed and controlled by themselves, although the result was that the minority was deprived of all interest in the assets of the vendor company (*Castello v. L. G. Omnibus Co.*, 1912, 107 L. T. 575).

(4) **Interference by the Court.**—The Court will interfere where there is no actual fraud but where the wrongdoers constitute or control the majority and are abusing their powers (*Alexander v. Automatic Telephone Co.*, 1900, 2 Ch. 56). A minority can prevent a bare majority from doing acts contrary to its articles, or acts which require the sanction of a special majority, and can prevent a company from acting on a special resolution obtained by a trick (*Baillie v. Oriental Telephone & Electric Co.*, 1915, 1 Ch. 503).

An individual shareholder either in his own name or together with other shareholders can bring an action when the company is acting *ultra vires*, or where his rights of property as a shareholder are being ignored, and also when he can show that it would be useless to convene a meeting having regard to the fact that the delinquents control a majority of votes.

(5) Power to acquire shares of dissentient shareholders.—Section 155 of the Act provides :—

(1) Where a scheme or contract involving the transfer of shares of any class of shares in a company (in this section referred to as “ the transferor company ”) to another company, whether a company within the meaning of this Act or not (in this section referred to as “ the transferee company ”), has within four months after the making of the offer in that behalf by the transferee company been approved by the holders of not less than nine-tenths in value of the shares affected, the transferee company may, at any time within two months after the expiration of the said four months, give notice in the prescribed manner * to any dissenting shareholder that it desires to acquire his shares, and where such a notice is given the transferee company shall, unless on an application made by the dissenting shareholder within one month from the date on which the notice was given the court thinks fit to order otherwise, be entitled and bound to acquire those shares on the terms on which under the scheme or contract the shares of the approving shareholders are to be transferred to the transferee company.

Where no less than nine-tenths of the shareholders of the transferor company approve a scheme, *primâ facie* the scheme must be taken to be a proper one, and the onus is on the dissentient shareholders of giving a reason why their shares should not be acquired by the transferee company. The Court has no right to order otherwise unless it is affirmatively established that notwithstanding the views of a very large majority of shareholders the scheme is unfair (*re Hoare & Co.*, 1934, 150 L. T. 374).

Provided that, where any such scheme or contract has been so approved at any time before the commencement of this Act, the court may by order, on an application made to it by the transferee

* See Form 100, *post*, p. 359.

company within two months after the commencement of this Act, authorise notice to be given under this section at any time within fourteen days after the making of the order, and this section shall apply accordingly, except that the terms on which the shares of the dissenting shareholder are to be acquired shall be such terms as the court may by the order direct instead of the terms provided by the scheme or contract.

(2) Where a notice has been given by the transferee company under this section and the court has not, on an application made by the dissenting shareholder, ordered to the contrary, the transferee company shall, on the expiration of one month from the date on which the notice has been given, or, if an application to the court by the dissenting shareholder is then pending, after that application has been disposed of, transmit a copy of the notice to the transferor company and pay or transfer to the transferor company the amount or other consideration representing the price payable by the transferee company for the shares which by virtue of this section that company is entitled to acquire, and the transferor company shall thereupon register the transferee company as the holder of those shares.

(3) Any sums received by the transferor company under this section shall be paid into a separate bank account, and any such sums and any other consideration so received shall be held by that company on trust for the several persons entitled to the shares in respect of which the said sums or other consideration were respectively received.

(4) In this section the expression "dissenting shareholder" includes a shareholder who has not assented to the scheme or contract, and any shareholder who has failed or refused to transfer his shares to the transferee company in accordance with the scheme or contract.

(6) Alteration of Articles.—The power given to a general meeting by special resolution to alter articles is limited to altering the articles relating to the management of the company, and not to altering its constitution (*Hutton v. Scarborough Cliff Hotel Co.*, 1865, 13 L. T. 57). This power must, like all other powers, be subject to those general principles of law and equity which are applicable to all powers conferred on majorities enabling them to bind minorities.

It must be exercised not only in the manner required by law but also *bonâ fide* for the benefit of the company as a whole, and it must not be exceeded (*Allen v. Gold Reefs of West Africa*, 1900, 1 Ch. 656). This principle was followed

in *Brown v. British Abrasive Wheel*, 1919, 1 Ch. 290, where it was held *ultra vires* for a company to alter the articles enabling a majority of the company to expropriate the minority on paying proper compensation. "It is difficult to see how it could be just and equitable that a majority, on failing to purchase the shares by agreement, should take power to do so compulsorily." Section 10 of the Act of 1929, by which a company has power to alter its articles, must be subject therefore to the limitation that this section cannot be used to oppress or defraud a minority of shareholders or to violate any principle of law or statute. In *Dafen Tinplate Co. v. Llanelly Steel Co.* (1920, 36 T. L. R. 428) it was held that a special resolution to alter articles to require any shareholder, other than a specified person, to transfer his shares at such a price as the board may determine, was a power given to a majority of shareholders which was not for the benefit of the company as a whole, and was therefore invalid.

Section 22 of the Act of 1929 provides that no member of a company is bound by any alteration in the articles which requires him to take more shares, or in any way increases his liability to contribute to the share capital of the company or otherwise pay money, unless he has agreed thereto in writing before or after the alteration was made, see p. 214, *post*.

In *Sidebottom v. Kershaw* (1919, 36 T. L. R. 45), it was held that a company's articles may be altered so as to provide that shareholders who carry on business in competition with the company may be required to transfer their shares to a nominee of the directors at the price certified by the auditors to be their fair value, but the alteration must be made *bonâ fide* with the intention of benefiting the company as a whole. Sterndale, M.R., distinguished this case from *Brown v. British Abrasive Wheel* (*supra*). "Here Mr. Justice Astbury came to the conclusion that the majority of the shareholders were acting not for the benefit of the company as a whole but for their own benefit." In *Sidebottom v. Kershaw* (*supra*) the alteration in the articles was done *bonâ fide* in the interest of the company.

A private company, the articles of which authorised the directors to provide for the welfare of employees and their widows and children, entered into a deed of covenant by which it granted a pension of £500 a year to the widow of a former managing director five years after his death. Some three years later the company passed a resolution for voluntary winding up. The widow lodged a proof in the winding up for the capitalised value of the annuity, but the liquidator rejected it. It was held that the transaction was not one for the benefit of the company or reasonably incidental to the company's business. The pension did not come within the terms of the company's articles, as a managing or other director is not a person in the employment of a company, and the action of the directors was not confirmed by the shareholders in general meeting convened for the purpose of doing so. The grant of the pension was therefore void and *ultra vires* the company (*re Lee, Behrens & Co.*, 1932, 2 Ch. 46).

Three Scottish cases illustrate the limitations of alteration of articles. In *McArthur v. Gulf Line* (1909, S. C. 732) a transferee presented a transfer for registration and under the then existing articles would have been entitled to have it registered. An alteration in the articles had been made for the express purpose of defeating this right to registration of the transfer. It was held that the transferee's right could not be thus defeated and he was entitled to be placed on the register notwithstanding the alteration in the articles. In *Gill v. Arizona Copper Co.* (1900, 2 F. 843) it was held that the contract rights of shareholders cannot be extinguished by the company or by a majority of the class of shareholders to which they belong. In *re Aberdeen Steam Navigation Co.* (1919, 1 S. L. T. 249), an application for confirmation of a special resolution altering the articles of the company to the effect of giving it *inter alia* power to sell apparently the whole undertaking was refused, on the ground that the powers of alteration by the Companies Act are limited, in that it appears to be assumed in the statute that the company is not to lose its identity, *i.e.* the proposed alteration must be for its advantage as a going and continuing concern

(7) **An ordinary resolution inconsistent with the articles is not effectual** (Quin & Axtens *v.* Salmon, 1909, A. C. 442), neither is a resolution which is *ultra vires* the company or which is against public policy or illegal. An act done in direct contravention of the articles may, however, be confirmed without a special resolution, provided it is *intra vires* the company. "There is a broad distinction between altering the articles and merely saying 'this act was not authorised by the articles, but we will ratify it.' The shareholders can ratify any contract which comes within the powers of the company" (Grant *v.* United Kingdom Switchboard Rail Co., 1888, 40 Ch. D. 135). Articles fixing the qualification and remuneration of directors being binding on the company as well as on the directors, the company cannot ratify an act of the directors in contravention of such articles without first altering them by special resolution (Boschoek Co. *v.* Fuke, 1906, 1 Ch. 148).

(8) **Majorities must not be tyrannical.**—At a meeting of shareholders it is not competent for a majority to come determined to vote in a particular way on any question and to refuse to hear any arguments to the contrary; but when the views of the minority have been heard, it is competent to the chairman, *with the sanction of a vote at the meeting*, to declare the discussion closed and to put the question to the vote.

(9) **No inherent power to pass a rule expelling a member from a company; express provision for alteration of articles or rules must be made.**—"There is no more inherent power in the members of a club to alter their rules so as to expel one of the members, against the wishes of the minority, than there is in the members of any society or partnership which is founded on a contract, that written contract of course expressing the terms on which the members associate together" (Dawkins *v.* Antrobus, 1881, 17 Ch. D., at p. 620).

(10) **Power of debenture holders to vary rights** is commonly given to a three-fourths majority, and although the minority will be bound by the decision of the majority,

care must be taken that the provisions of the trust deed or the debentures are strictly complied with. A majority must not give away the rights of the whole body (*Mercantile Investment Co. v. International Co.*, 1893, 1 Ch. 484*n*).

Powers given to majorities to bind minorities are always liable to abuse, and whilst full effect ought to be given to them in cases clearly falling within them, ambiguities of language ought not to be taken advantage of to strengthen them, and make them applicable to cases not included in those which they apparently were intended to meet. Subject to the above limitations, the majority is supreme, and the Court will not only respect any decisions come to by them, but will, if necessary, lend its aid to enforce their decisions on a recalcitrant minority.

7. POWERS OF A COMPANY TO COMPROMISE WITH CREDITORS AND MEMBERS

Section 153 (2) of the Act of 1929 provides :—

If a majority in number representing three-fourths in value of the creditors or class of creditors, or members or class of members, present and voting either in person or by proxy at the meeting, agree to any compromise or arrangement, the compromise or arrangement shall, if sanctioned by the Court, be binding on all the creditors or the class of creditors, or on the members or class of members, and also on the company, or, in the case of a company in the course of being wound up, on the liquidator and contributories of the company.

In proceedings under Section 153, for the sanction by the Court of a compromise or arrangement between a company and its creditors, or any class of them, the responsibility for determining what creditors are to be summoned to any meeting, as constituting a class, is the applicant's, and if the meetings are incorrectly convened or constituted, or an objection is taken to the presence of any particular creditors as having interests competing with the others, the objection must be taken on the hearing of the petition for sanction, and the applicant must take the risk of having it dismissed (*Practice note*, 1934, W. N. 142).

(1) The sanction of three-fourths in value of the creditors present and voting in person or by proxy is sufficient, although it may not be three-fourths of the total amount of debts (*re* Bessemer Steel Co., 1876, 1 Ch. D. 251).

(2) The Court will not sanction a scheme if it appears that the majority have not voted *bonâ fide* in favour of the creditors as a whole (*re* Wedgwood Coal Co., 1877, 6 Ch. D. 627), or if in all the circumstances it does not approve of the scheme (*ex parte* Strawbridge, 1883, 25 Ch. D. 266). But creditors, who are also shareholders, are nevertheless entitled to vote as creditors and in the same class with creditors who are not shareholders (*re* Madras Irrigation Co., 1881, W. N. 172).

(3) The Court does not sit merely to say that the majority are acting *bonâ fide* and thereupon to register the decision of the meeting (*re* English, Scottish, &c., Bank, 1893, 3 Ch. 385), but at the same time the Court will be slow to differ from the meeting, unless either the creditors have not been properly consulted, or the meeting has not considered the matter with a view to the interests of the class which it is empowered to bind, or some blot is found in the scheme (*re* London Chartered Bank of Australia, 1893, 3 Ch. 540).

(4) Shares on which the uncalled liability has been paid up in advance and bears interest are not, on a reconstruction of the company, in the same position as fully paid shares; and therefore, where meetings of the shareholders are called under Section 153 to consider a scheme, there must be a separate meeting of the holders of such advanced shares as well as of fully paid and partly paid shareholders (*re* United Provident Assurance Co., 1910, 2 Ch. 477; *Sovereign Life Assurance Co. v. Dodd*, 1892, 2 Q. B. 573; *Lainière de Roubaix v. Glen Glove, &c., Co.*, 1926, S. C. 91).

(5) Where there was an inadvertent omission to advertise a scheme of arrangement, but it was satisfactorily proved that 30 out of 31 shareholders had received the notices, the Court held that the meetings had in substance been held in manner prescribed, and did not insist on further meetings being convened (*re* Anglo-Spanish Tartar Refineries, 1924, 68 S. J. 738).

(6) In short, the functions of the Court are to see that the class is fairly represented at the meeting; that the statutory majority are acting *bonâ fide* and are not coercing the minority in order to promote interests adverse to the class whom they purport to represent; and that the arrangement is one which a business man would reasonably approve.

CHAPTER XV

MEETINGS OF DIRECTORS

SECTION 139 of the Act provides :—

- (1) Every company registered after the commencement of this Act shall have at least two directors.
- (2) This section shall not apply to a private company.

Unless the articles provide to the contrary, directors act at duly constituted meetings called board meetings. The procedure is less formal than that of general meetings, and is in most respects similar to that of committee meetings, and many rules of the latter apply to board meetings (see *post*, p. 155).

Table A.—It should be clearly understood when reference is made to Table A that its provisions *only* apply to companies which have not elected to furnish themselves with other regulations and duly registered them, or have not expressly excluded them, and have not made all necessary provisions in their own articles. Section 8 (2) provides : “If articles are not registered, or, if articles are registered, in so far as the articles do not exclude or modify the regulations contained in Table A, those regulations shall, so far as applicable, be the regulations of the company in the same manner and to the same extent as if they were contained in duly registered articles.”

Articles are, of course, subject to the provisions of Sections 112 to 121 of the Companies Act, 1929.*

1. BOARD MEETINGS

To constitute a valid board meeting the following conditions must be complied with :—

* Hereinafter referred to as the Act.

1. The proper person must be in the chair.—His appointment is generally in the hands of the directors, and is governed by the articles.

Chairman of directors.—Where directors appoint a chairman, there is no contract that he shall remain chairman until he ceases to be a director, and the directors have power at any time to substitute another chairman in his place (*Foster v. Foster*, 1916, 1 Ch. 532).

In *British Business Motors v. Edge* (*The Times*, 23rd March, 1914) £800 damages was given against Edge, who had broken an agreement to act as chairman of the company for three years, although the company went into liquidation a month after his retirement.

An appointment of a chairman of directors made in contravention of the articles is void and is not regularised by mere acquiescence, and consequently resolutions carried by the casting vote of such a chairman are inoperative (*Clark v. Workman*, 1920, 1 I. R. 107).

2. The board must be properly constituted.—See *re Sly, Spink & Co.* (*post*, p. 193). Sometimes articles provide for alternative or substitute directors to act for directors going abroad, but the Stock Exchange generally objects to such a provision.

Acts done as directors by persons who have not been validly elected do not bind the company (*Garden Gully United Quartz Mining Co. v. McLister*, 1875, 1 A. C. 39); it is otherwise if the fact that they were not properly elected is only discovered afterwards (Sect. 143). Outsiders are, however, entitled to assume that the domestic affairs of a company are properly conducted (*Royal British Bank v. Turquand*, 1856, 6 E. & B. 327), but see *Houghton v. Northard, Lowe & Wills* (1928, A. C. 1).

3. A disinterested quorum must be present, see *post*, p. 150.

Directors must act as a board, not as individuals, unless the articles give special powers to certain members of the board of directors. It follows, then, that the directors

cannot act as a board without holding a meeting. But, apparently, where *all* the directors agree to a particular course of action, it is not necessary for a meeting to be held (*ex parte* Kennedy, 1890, 44 Ch. D. 472, following *Hallows v. Fernie*, 1867, L. R., 3 Eq. 520).

A director need not attend every meeting, though he should attend as often as circumstances permit. He is bound to use fair and reasonable diligence in the management of his company's affairs and to act honestly (*re Forest of Dean Coal Mining Co.*, 1878, 10 Ch. D. 450).

A director is not liable for misfeasance committed by co-directors without his knowledge at board meetings at which he is not present (*Perry's Case*, 1876, 34 L. T. 716).

Business can only be validly transacted by the majority of the directors at a meeting properly convened (*Moore v. Hammond*, 1827, 6 B. & C. 456) and held, and at which there is the quorum as prescribed by the articles (but see *Boschoek Co. v. Fuke*, 1906, 1 Ch. 148). A subsequent meeting can ratify the business done at an informal meeting (*re Portuguese Consolidated Copper Mines*, 1889, 42 Ch. D. 160), and can ratify an unauthorised act of an agent of the company (*Molineaux v. London, Birmingham. &c. Co.*, 1902, 2 K. B. 589).

Directors cannot think without meeting (*re Portuguese Consolidated Copper Mines*, 1889, 42 Ch. 167). "It was laid down by the Court of Exchequer in *D'Arcy v. Tamar, Kit Hill, and Callington Railway Company* (1867, L. R., 2 Ex. 158) that directors must act together as a board, and that it is not sufficient to procure the separate authority of a sufficient number of directors to constitute a quorum" (*re Haycraft Gold Reduction and Mining Company*, 1900, 2 Ch., at p. 235). But the concurrence of directors in an act, *e.g.* an agreement which they are empowered to make, being given separately and without any meeting of the directors in one place will not prevent the agreement being good against outsiders (*re Bonelli's Telegraph Co.*, 1871, 40 L. J. Ch. 567).

A board meeting can be held under informal circumstances but the casual meeting of two directors, even at

the office of the company, cannot be treated as a board meeting at the option of one against the will and intention of the other, and it makes no difference that a notice convening a board meeting has been sent by the one to the other if such notice has not in fact been received by the other (*Barron v. Potter*, 1914, 1 Ch. 895).

Thus directors cannot usually act without meeting as a board, unless the articles otherwise provide. An article which provides that a resolution in writing signed by the directors shall be as valid and effectual as if it had been passed at a meeting of the board, is not allowed by the Committee of the Stock Exchange when considering an application for a Stock Exchange quotation of a company.

Apart from special regulations, apparently any one director may summon a meeting of directors, and where *all* are present the meeting may be very informal (*Smith v. Paringa Mines*, 1906, 2 Ch. 193) provided their decisions are properly recorded in the minutes (*re Liverpool Household Stores*, *post*, p. 153).

Where the articles provided that no person not recommended by the board of directors for election as a director should be eligible unless at the time he had held twenty shares for two months, and B, who was not a shareholder, was elected unanimously at a *general* meeting—six out of seven directors, who were then the only shareholders, being present—it was held that B's election was void. "Six directors out of seven met in a different capacity and for a different purpose, and such a meeting does not make them a board of directors" (*re East Norfolk Tramways Co.*, *Barber's Case*, 1877, 5 Ch. D., p. 967).

2. VACATION OF OFFICE AND CASUAL VACANCIES

Vacation of office.—When the articles of association provide that a director shall vacate his office on the happening of some event, or the doing of some act, a director automatically vacates his office on the happening of the event or the act being done; and the board have no power to waive the event, or to condone the offence or the act which causes the vacation of office (*re Bodega Co.*, 1904, 1 Ch. 276).

Retirement at ordinary meeting.—Where directors by the articles retire from office at an ordinary general meeting, failure to hold such a meeting will prevent their re-election, their retirement dating from the last day in the year on which a general meeting could have been held (*re Consolidated Nickel Mines*, 1914, 1 Ch. 883). In *Spencer v. Kennedy* (1926, 1 Ch. 125) a director A was due to retire at the annual general meeting on November 11, and part of the business of which notice was given was the election of a director in his place. A resolution was moved at that meeting which was adjourned from time to time to November 17th, when the resolution was lost. An article provided that if at any adjourned meeting the place of a vacating director be not filled up, the vacating director shall be deemed to have been re-elected at the adjourned meeting. It was held that the adjourned meeting was merely a continuation of the original meeting; that the article had no application; and that A was not validly a director of the company.

An offer made verbally to resign the office of director, and accepted by a resolution at a general meeting, is valid notwithstanding the articles provide for notice in writing (*Latchford Premier Cinema v. Ennion*, 1931, W. N. 204).

Where articles provided that the company in general meeting should fill up vacancies in the directorate, and also that the directors might fill up casual vacancies on the board, a casual vacancy occurred, and, before it was filled up, a general meeting of the company was held at which the vacancy was not filled up; it was held that the directors could still fill up the vacancy and *semble* the general meeting could have filled up the vacancy (*Munster v. Cammell Company*, 1882, 21 Ch. D. 183). Where articles provided that casual vacancies in the office of director might be filled up by the board, and that the directors might appoint additional directors up to the prescribed maximum, it was held in *Blair Open Hearth Furnace Co. v. Reigart* (1913, 108 L. T. 665), that the express power vested in the board of appointing additional directors excluded any implied concurrent power to the same effect in the company, which had by its constitution delegated to the members of the

board for the time being the sole right of appointing additional directors.

But where the power of electing additional directors is by articles in the general meeting, an election by the directors is invalid (*Worcester Corsetry Ltd. v. Witting*, 1936, Ch. 640).

Where, owing to differences between the directors, no board meeting can be held for the purpose, the company retains power to appoint additional directors in general meeting (*Barron v. Potter*, 1914, 1 Ch. 895). This followed the principle of *Isle of Wight Railway Co. v. Tahourdin* (1883, 25 Ch. D. 320), where it was held that a general meeting of the company, one governed by the Companies Clauses Acts, 1845–1889, had power to elect directors where the directors did not think fit to exercise their powers.

Declaration as to election of directors.—The declaration of a chairman of the election of directors of a company is *primâ facie* evidence of the validity of such election (*Wandsworth and Putney Gas Co. v. Wright*, 1870, 22 L. T. 404).

3. NOTICE OF MEETING AND AGENDA

Directors of a company being the select managing body, can at any meeting of the board deal with all the affairs of the company then requiring attention, whether ordinary or not, and previous notice of the special business is not a necessary condition of the proceedings being valid (*La Compagnie de Mayville v. Whitley*, 1896, 1 Ch. 788) in the absence of provision by the articles.

Reasonable notice must be given of the meeting unless the articles otherwise provide (*Browne v. La Trinidad*, 1887, 37 Ch. D. 1). What is a reasonable notice will largely depend upon the usual practice of the board. Consequently a meeting summoned at short notice, as in *re Homer Gold Mines* (1888, 39 Ch. D. 546) was held invalid, since the Court came to the conclusion that it was so summoned with a view to excluding certain directors. If a proper notice be not given, the proceedings are invalid unless all the directors are present (*Harben v. Phillips*, 1883, 23 Ch. D. 14). There

is, however, no need to send notice when the directors have decided to hold meetings at regular intervals, *i.e.* when there is a fixed day and time: *e.g.* weekly meetings on Fridays, at 3 p.m. It is usual in such cases to send a bare notice merely stating on the agenda "General Business," unless the directors at a duly constituted board meeting have resolved that no such notice is to be sent. In the absence of regulations as to length of notice, a reasonable time between notice and meeting is necessary. But it is better to send notices with an agenda to every director for every meeting. Notice need not be given to a director who is abroad and out of reach, unless the articles expressly require this (*Halifax Sugar Co. v. Francklyn*, 1890, 62 L. T. 564).

Directors are entitled to take their business at a board meeting in any order they may think proper (*re Cawley & Co.*, 1889, 42 Ch. D. 209).

4. QUORUM

Table A, Clause 45, fixes a quorum as three members personally present. If Table A does not apply, the quorum of a private company is two members, and of a public company three members personally present (Section 115 (*d*)).

The articles usually prescribe the number for a quorum, failing which a majority of the directors must be present to constitute and act as a board (*York Tramways v. Willows*, 1882, 8 Q. B. D. 685), or the number who usually act will do (*Lyster's Case*, 1867, L. R., 4 Eq. 233). In *Cox v. Dublin Distillery* (1915, 1 I. R. 345), where the quorum was two, it was held that as both directors present were interested parties, there was no quorum competent to vote on a resolution passed, and consequently the resolution was invalid. A director cannot form part of and must not be counted in the quorum of a meeting which purports to deal with a matter in which he is not entitled to vote (*Yuill v. Greymouth Point Elizabeth Railway*, 1904, 1 Ch. 32), neither can he vote on a resolution for altering the quorum at a particular meeting, so as to enable the board to enter into a contract

on which he cannot vote (*re* North-Eastern Insurance Co., 1919, 1 Ch. 198).

As to when a board is reduced to *one* director, see Channel Collieries Trust *v.* Dover &c. R. Co. (*ante*, p. 116), and Barron *v.* Potter (*ante*, p. 145).

One person may be a quorum, if the articles so provide (*re* Fireproof Doors, 1916, 2 Ch. 142; and see Kelanton Coco Nut Estates, 1920, W. N. 274).

If the quorum of a board is two, it does not necessarily follow that the physical presence of two persons constitutes a meeting; there must have been some previous notice or arrangement or some intention or agreement to meet as a board (Barron *v.* Potter, *ante*, p. 145).

Where the quorum of a board was three, and at a meeting of two the secretary was instructed to affix the seal to a mortgage, it was held that as between the company and the mortgagees who had no notice of the irregularity the execution of the deed was valid (County of Gloucester Bank *v.* Rudry Merthyr &c. Co., 1895, 1 Ch. 629).

Failure to keep quorum.—Where there is a quorum at the beginning of a meeting, but some of the directors leave the meeting, so that a number less than the quorum is left, any subsequent acts would be invalid unless the articles provided for such a contingency.

Presence of quorum does not exclude other directors from attending.—"The presence of a quorum does not prevent lawfully constituted directors from attending, or allow a portion of the board to exclude the others" (Harben *v.* Phillips, 1883, 23 Ch. D., at p. 26).

Maximum and minimum number.—Articles usually fix what is to be the maximum and minimum number of the directors. Where a minimum is fixed, and the number of the directors falls below the minimum number, the remaining directors *primâ facie* cannot act (*re* Alma Spinning Co., 1880, 16 Ch. D. 681) unless the articles contain the ordinary provision enabling the directors to act notwithstanding vacancies (*re* Scottish Petroleum Co., 1883, 23 Ch. D. 431). Continuing directors in the case of a *statutory* company

(see *ante*, p. 116) can act, even though there are too few of them to form a quorum (*Channel Collieries Trust v. Dover &c. R. Co.*, 1914, 2 Ch. 506); possibly the same rule might apply in the case of limited companies. Nevertheless, their acts may be valid in favour of a person who has no notice of the irregularity (*British Asbestos Co. v. Boyd*, 1903, 2 Ch. 439).

In *re Copal Varnish Co.* (1917, 2 Ch. 349), where a director of a board of two refused to attend meetings summoned to consider transfers of shares in order to prevent a quorum being formed, it was held that the transferees were entitled to an order directing the company to register the transfers, since a shareholder has a property in his shares which he has the right to dispose of subject only to any express restriction in the articles. In *Lubin v. Draeger* (1918, 144 L. T. Jo. 274) all the shares were held in equal parts by A, B, C, who were directors, and a quorum of whom was two. A called a meeting of directors at which he only attended, and approved of a transfer to D and appointed him a director. It was held that transfer and appointment were invalid.

Resolutions invalid for want of a disinterested quorum.—A quorum of directors means a quorum competent to transact and vote on the business before the board; and therefore a resolution passed at a meeting of three directors, two of whom were interested in the subject-matter of the resolution, was held invalid (*Yuill v. Greymouth Point Elizabeth R. Co.* 1904, 1 Ch. 32). Articles provided that directors could contract with the company, but not vote in connection with such contracts, and that they could determine the quorum. The quorum was three. Four directors were present, of whom two, A and B, were interested in two separate contracts with the company. Two resolutions relating to the issue of debentures were passed, one affecting A and B. Neither voted in relation to the resolution affecting his own contract. Subsequently a resolution was passed that the quorum should be reduced to two to enable these contracts to be entered into. It was held that all these resolutions were invalid for the want of a disinterested quorum;

that the issue of the debentures was one transaction and the splitting the resolutions did not make them valid, and that a resolution to reduce the quorum for the purpose of issuing a debenture to a director was invalid (in *re North Eastern Insurance Co.*, 1919, 1 Ch. 198; *Victors Ltd. v. Lingard*, 1927, 1 Ch. 323).

5. DIRECTORS' VOTES

Unless the articles otherwise provide, each director will have only one vote at a board meeting. If articles provide for a quorum, a majority of that quorum at a meeting, properly constituted, will be competent to determine any matter; if there is no quorum fixed, the Common Law rule prevails that a majority of the whole board must actually vote for the resolution, which is then deemed to be passed by the directors (*R. v. Bower*, 1823, 1 B. & C. 492). A director is, however, entitled to attend board meetings even when he is not entitled to vote thereat (*Grimwade v. B.P.S. Syndicate*, 1915, 31 T. L. R. 531).

Votes of directors in matters in which they are personally interested.—Directors are usually forbidden to vote as directors on contracts in which they are interested, and when so forbidden they must not be reckoned in forming a quorum (*Yuill v. Greymouth Point Elizabeth Railway*, *ante*, p. 148). Such a prohibition will not, however, prevent a director from voting as a shareholder at general meetings of the company upon contracts in which he is interested (*N.W. Transportation Co. v. Beatty*, 1887, 12 App. Cas. 589), but an appropriation to themselves of property or valuable contracts sanctioned by their votes at a general meeting will not be valid (*Cook v. Deeks*, 1916, 1 A. C. 554).

In *re Express Engineering Works* (1920, 36 T. L. R. 275) one of the articles provided that no director should, as a director, vote in respect of any contract in which he might be interested. All the shareholders were appointed directors, and at a board meeting they decided to enter into a contract in which they were interested but which was *intra vires* the company. It was held that as every

member of the company had assented to the contract it was not invalid under the article, following *Salomon v. Salomon* (1896, 13 T. L. R. 46), where it was held that a company is bound in a matter *intra vires* by the unanimous agreement of its members, which was followed in *re Oxted Motor Co.*, *post*, p. 178.

Even where the articles allow directors to enter into contracts with their companies, the Stock Exchange requires that they should not be allowed to vote upon matters in which they are interested.

6. MINUTES OF PROCEEDINGS OF DIRECTORS

Minutes of board meetings.—A clause giving a right of inspection of the minute books of a company does not give a shareholder the right to inspect the minutes of board meetings. “It is highly proper that an inspection of the books containing the proceedings of the directors should be obtained on special occasions and for special purposes: but the business of such companies could hardly be conducted if anyone, by buying a share, might entitle himself at all times to gain a knowledge of every commercial transaction on which the directors engage, the moment that an entry of it is made in their books . . . the proposed daily and hourly inspection and publication of all their proceedings . . . would probably ere long be found very prejudicial to shareholders” (*R. v. Mariquita Mining Co.*, 1859, 1 E. & E. 289), notwithstanding the dictum in *re Cawley* (1889, 42 Ch. D., at p. 226): “Minutes of board meetings are kept in order that the shareholders of the company may know exactly what their directors have been doing—why it was done and when it was done.” But they should be accessible to directors and the secretary; auditors also are entitled to see them for the purposes of audit. Even individual directors may be precluded from seeing the minutes when they have no reasonable grounds for inspection or when they are not acting *bonâ fide* and in the best interests of the company (*R. v. Hampstead B. C.*, 1917, 116 L. T. 212).

Section 121 of the Act (*post*, p. 242) provides for the

inspection of minute books relating to proceedings of any *general* meeting of the company.

Minutes should be accurate, clear, and definite.—

“Directors ought to place on record, either in formal minutes or otherwise, the purport and effect of their deliberations and conclusions ; and if they do this insufficiently or inaccurately they cannot reasonably complain of inferences different from those which they allege to be right ” (*re* Liverpool Household Stores, 1890, 59 L. J. Ch., at p. 619). “As they were directors, the minute is admissible against them ; but none the less does other evidence appear admissible though the existence of the minute is a circumstance to be considered in judging of its weight ” (*re* Pyle Works, No. 2, 1891, 1 Ch. 184). It is not essential to the validity of the exercise of powers of directors that they should be formally embodied in formal resolutions, provided that the minutes record the substance of the decision arrived at (*re* Land Credit Co., 1869, L. R., 4 Ch., at p. 473).

It has been said *the hand that drafts the minutes rules the board*, and although the secretary's is the hand that usually drafts the minutes, it is the chairman's duty to sign them and make them *primâ facie* evidence, see Section 120 *post*, p. 244 ; it follows, therefore, that the responsibility for their accuracy is thrown on the chairman. The secretary should take care that the record is absolutely impartial and free from ambiguity, that the exact account of what was actually agreed upon and nothing more is minuted, and that it is sufficiently detailed and complete, so that an absent member can fully understand from the record what was done at the meeting, with names of proposers and seconders of motions, and amendments. The names of directors present should be carefully recorded ; the names of officials, if recorded, to be stated as being “in attendance.” Hence, if directors do any *ultra vires* acts not binding the company, the personal responsibility thereupon entailed can easily be ascertained. The chairman usually makes a short note of the proceedings of the meeting, and his decisions on points of difference, unless submitted to the following meeting, are of course final.

As regards statutory companies, *see* the Companies

Clauses Act, 1845, Section 98, *ante*, p. 120 (which, of course, does not govern limited companies under the Act of 1929), as to evidence of minutes.

Liability of directors in reference to minutes.—

A director who is present at a meeting of the board at which the minutes of a previous board meeting are confirmed, even though he be a party to their confirmation, is not thereby made responsible for what was done at such previous board meeting (*re* Lands Allotment Co., 1894, 1 Ch. 616).

A director does not make himself responsible for an act done at a meeting at which he was not present, and which is complete without further confirmation, merely by voting at a subsequent meeting for the confirmation of the minutes (*Burton v. Bevan*, 1908, 2 Ch. 240). See also *Tothill's Case*, 1865, L. R., 1 Ch. 85; *re Montrotier Asphalte Co.*, 1876, 34 L. T. 716; *Ashurst v. Fowler*, 1875, L. R. 20, Eq. 225; *Lucas v. Fitzgerald*, 1903, 20 T. L. R. 16.

Confirm.—"That word sometimes means merely verify; it is commonly used in that sense at the meetings of public bodies who confirm the minutes of their last meeting, not meaning thereby that they give them force, but merely that they declare them accurate" (*R. v. Mayor of York*, 1853, 1 E. & B., p. 594). See *Mawley v. Barbet* (*ante*, p. 54) as to confirmation, *i.e.* adoption, of the proceedings of the previous meeting being unnecessary at the succeeding meeting.

Signing the minutes.—Minutes need not but should be signed at a meeting. They can be signed at any time and even after a winding up (*Roney's case*, 1864, 33 L. J., Ch. 731).

Articles provided that a minute signed by any person purporting to be chairman of any meeting of directors was to be receivable in evidence without further proof. An entry was made in a minute book stating the names of parties and number of shares subscribed for, the name of the chairman who signed the minute being set down for one hundred shares. The minute was signed, not at the next meeting, but after the proceedings to wind up the company. It was held that the minute was *primâ*

facie evidence against all who were present at the meeting, and in the absence of counter evidence showing the incorrectness of the minute, the chairman was liable as a contributory for one hundred shares (*ex parte* Stock, 1864, 33 L. J. Ch. 731).

Where resolutions are not carried unanimously it is desirable to record the names of those who voted for and against the resolution where there is a request for such a record. A director is not entitled to have his protest recorded in the minutes, but if he votes against a motion he is entitled to have that fact noted in the minutes if he so desires.

7. THE COMMITTEE SYSTEM

Where the power of allotting shares is vested by the deed of settlement of a company in the board of directors, the quorum of which is three, they have no right to delegate such power—*c.g.* to two directors (*re* Leeds Banking Co. (Howard's Case), 1866, L. R., 1 Ch. 561). The directors may, if the articles contain the necessary authority, delegate some of their powers to a committee, and this is usually effected by resolution passed at a meeting of the board. The articles very generally provide for this.

When a board of directors delegate their powers to a committee without any provision as to the committee acting by a quorum, all acts of the committee must be done in the presence of all the members of the committee, and *semble* the committee have not under their delegated authority power to add to their number or supply a vacancy (*re* Liverpool Household Stores, 1890, 59 L. J. Ch. 616).

The work of a board of directors is generally subdivided amongst committees formed by members of the board—*i.e.* by selection out of a larger number, although sometimes a committee may have power to add to its number. The chairman of the directors is usually a member of each committee, *ex officio*. The powers of such committees are entirely derived from the board of directors. The board is the ultimate authority, and committees may only exercise such subordinate powers as are given them by their appointing authority.

Generally a committee has no plenary power, its work being one of investigation, consideration, and recommendation; on the other hand, it may have been entrusted with full executive powers to act without reporting to the board. In all cases of appointment of a committee its powers and authority should be clearly stated, and its work definitely fixed. Usually a committee has subordinate powers of a limited character, its functions being confined to the administration of special departments of work—*e.g.* finance. Thus a committee may be empowered to determine and execute or to inquire and to report for the information of its executive authority. Where a company is regulated by Table A, directors may appoint a quorum of one under Clause 82 or delegate their powers to a committee of one under Clause 85 (*re* Fireproof Doors, 1916, 2 Ch. 142).

The advantages of the committee system are many: *e.g.* it allows division of labour, adequate consideration of matters of detail, gives a director an opportunity of devoting himself to that particular branch of work in which he is an expert, or with which he is familiar, and thus utilises his services to the best interests of the company. The disadvantages are few—*e.g.* where the committees have plenary power the control of the board is weakened, but this may be minimised where the chairman is *ex officio* member of each committee and makes a practice of attending committee meetings. Occasionally division of a board into committees leads to division of opinion, and engenders want of harmonious working. Again, there must be a certain amount of delay which is unavoidable when the board has to confirm or agree to the recommendations of its committees. This may be prevented either by holding the meetings of the committees on the same day as the board meeting, or a day or two previously.

The numbers constituting a committee must depend upon circumstances; if too large, it may be difficult to secure the attendance of *all* at every meeting, as will be necessary, unless the board, when appointing the committee, fix a quorum, in which case the attendance will necessarily vary

and the permanent officials will predominate ; if too small, it may lead to the autocratic rule of the chairman, although where desirable a committee may be appointed to consist of one person (*re* Taurine Co., 1883, 25 Ch. D. 118).

The Companies Clauses Act, 1845, Sections 95 and 96 make provision for delegation of the work of directors to committees (this of course does not affect companies governed by the Act of 1929). See *ante*, p. 119.

8. POWERS OF DIRECTORS AND MEMBERS *INTER SE*

1. A limited company is bound in a matter *intra vires* the company by the unanimous consent of all its corporators, if it is honest and especially if it is for the benefit of the company as a whole. If all the individual corporators in fact assent to a transaction that is *intra vires* the company though *ultra vires* the board, it is not necessary that they should hold a meeting in one room or one place to express that assent simultaneously (*Parker & Cooper v. Reading*, 1926, 1 Ch. 975).
2. If the board act outside their own powers, but *intra vires* the company, the members may ratify and make such act valid. See *ante*, p. 130.
3. If the act is *ultra vires* the company, the members cannot ratify or acquiesce in such act.
4. Members cannot override the decisions or acts of the directors if the board act *intra vires* the Acts and articles (*Automatic Self-Cleansing Filter Syndicate v. Cuninghame*, *ante*, p. 132).
5. The members cannot have control of the business or management of the company if that is vested in the directors by the articles, unless those articles are altered or unless there is a deadlock and the directors either cannot or will not act (*Barron v. Potter*, *ante*, p. 132).

“ If there is no power given by the articles of association to remove a director, all the shareholders cannot say effectually that he is to be

removed, for it has been decided that there is no power to remove a director unless it is given by the articles of association" (*Harben v. Phillips*, 1883, 23 Ch. D., at p. 39), but see *Parker & Cooper v. Reading* (*ante*, p. 157).

6. Directors of a company are not entitled to use their power of issuing shares merely for the purpose of keeping control over the affairs of the company or defeating the wishes of the existing majority of shareholders (*Piercy v. Mills & Co.*, 1919, 35 T. L. R. 703).

CHAPTER XVI

MEETINGS OF SHAREHOLDERS

KINDS OF MEETINGS

THERE are four kinds of meetings of shareholders commonly called *general* meetings.

I. Statutory Meeting, the purport of which is to ensure that at an early date the shareholders may have an opportunity of ascertaining the precise position and prospects of the company. This is usually the first meeting of a public company, but as the statutory meeting cannot be held earlier than one month from the date at which the company is entitled to commence business, an ordinary general meeting may, in certain cases, be the first meeting of the company. A private company need not hold a statutory meeting.

By the Act of 1929,* Section 113, it is provided :—

(1) Every company limited by shares, and every company limited by guarantee and having a share capital shall, within a period of not less than one month nor more than three months from the date at which the company is entitled to commence business, hold a general meeting of the members of the company, which shall be called “ the statutory meeting.”

(2) The directors shall, at least seven days before the day on which the meeting is held, forward a report (in this Act referred to as “ the statutory report ”) to every member of the company.

(3) The statutory report shall be certified by not less than two directors of the company, or, where there are less than two directors, by the sole director and manager ; and shall state—

- (a) The total number of shares allotted, distinguishing shares allotted as fully or partly paid up otherwise than in cash, and stating in the case of shares partly paid up the extent to which they are so paid up, and in either case the consideration for which they have been allotted ;
- (b) The total amount of cash received by the company in respect of all the shares allotted, distinguished as aforesaid ;
- (c) An abstract of the receipts of the company and of the payments made thereout, up to a date within seven days of the date of the report, exhibiting under distinctive headings the receipts of the company from shares and debentures

* Afterwards referred to as the Act.

and other sources, the payments made thereout, and particulars concerning the balance remaining in hand, and an account or estimate of the preliminary expenses of the company;

- (d) The names, addresses, and descriptions of the directors, auditors (if any), managers (if any), and secretary of the company; and
- (e) The particulars of any contract, the modification of which is to be submitted to the meeting for its approval, together with the particulars of the modification or proposed modification.

(4) The statutory report shall, so far as it relates to the shares allotted by the company, and to the cash received in respect of such shares, and to the receipts and payments of the company on capital account, be certified as correct by the auditors (if any) of the company.

(5) The directors shall cause a copy of the statutory report, certified as required by this section, to be delivered to the registrar of companies for registration forthwith after the sending thereof to the members of the company.

(6) The directors shall cause a list showing the names, descriptions, and addresses of the members of the company, and the number of shares held by them respectively, to be produced at the commencement of the meeting, and to remain open and accessible to any member of the company during the continuance of the meeting.

(7) The members of the company present at the meeting shall be at liberty to discuss any matter relating to the formation of the company, or arising out of the statutory report, whether previous notice has been given or not, but no resolution of which notice has not been given in accordance with the articles may be passed.

(8) The meeting may adjourn from time to time, and at any adjourned meeting any resolution of which notice has been given in accordance with the articles, either before or subsequently to the former meeting, may be passed, and the adjourned meeting shall have the same powers as an original meeting.

(9) In the event of any default in complying with the provisions of this section every director of the company who is guilty of or who knowingly and wilfully authorises or permits the default shall be liable to a fine not exceeding fifty pounds.

(10) This section shall not apply to a private company.

By Section 36 (1) a company limited by shares or a company limited by guarantee and having a share capital shall not previously to the statutory meeting vary the terms of a contract referred to in the prospectus, or statement in

lieu of prospectus, except subject to the approval of the statutory meeting.

Hence the approval of the statutory meeting will be necessary where the company has varied the terms of a contract referred to in the prospectus in order to make such variation valid.

By Section 171 (2) where a petition for winding up is presented on the ground of default in delivering the statutory report to the registrar or in holding the statutory meeting, the Court may, instead of making a winding-up order, direct that the statutory report shall be delivered or that a meeting shall be held.

1. Notices convening a meeting under this section must state that it is to be a statutory meeting (*Gardner v. Iredale*, 1912, 1 Ch. 700).

2. Statutory meeting provides full scope for discussion and action.—Sub-section (7) (*ante*, p. 160) provides free scope for discussion whether notice has been given or not, though no resolution may be passed without notice thereof. But notice of a proposed resolution can be given subsequently and passed at an adjourned meeting.

3. The power of adjournment is entirely in the hands of the meeting.—Sub-section (8) (*ante*, p. 160): “The *meeting* may adjourn from time to time,” which puts the power of adjournment into the hands of the *majority of the meeting* (unanimity is not necessary), independently of the chairman, whether the articles give him the power to adjourn or not.

4. Default in holding statutory meeting by Public Company.—By Section 113 (9), *ante*, a penalty of £50 may be imposed on every director who knowingly and wilfully is a party to the default. Failure to hold such a meeting is, however, one of the circumstances in which the company may be wound up by the Court (Section 168). In *re Kent Outcrop Coal Co.* (1912, W. N. 26) the first compulsory winding-up order was made for this default.

5. In the opinion of Somerset House the statutory meeting of a company is held to be a general meeting within

Section 112, but not an ordinary general meeting within Section 108. Thus a company should hold two meetings in the first year of its existence, one being the statutory meeting and the other an ordinary general meeting, in order to comply with Section 108. A private company is not required to hold a statutory meeting, see Section 113 (10), *ante*, p. 160.

II. Ordinary General Meetings.—Section 112 of the Act enacts that—

(1) A general meeting of every company shall be held once at the least in every calendar year, and not more than fifteen months after the holding of the last preceding general meeting.

(2) If default is made in holding a meeting of the company in accordance with the provisions of this section, the company, and every director or manager of the company who is knowingly a party to the default, shall be liable to a fine not exceeding fifty pounds.*

(3) If default is made as aforesaid, the Court may, on the application of any member of the company, call or direct the calling of a general meeting of the company.

In the absence of fraud, the directors have a right to select the place of meeting if acting *intra vires* and *bonâ fide* (see *Martin v. Walker*, 1918, 145 L. T. N. 377).

A general meeting may be an ordinary or extraordinary meeting (see *Hamilton's Case*, 1873, L. R., 8 Ch., at p. 553).

The calendar year begins 1st January (*Gibson v. Barton*, 1875, L. R., 10 Q. B. 329.) Failure to hold a meeting within the calendar year and not holding it within fifteen months from the preceding meeting are separate offences. The former offence is not committed until after 31st December, even though the period of fifteen months has already elapsed (*Smedley v. Registrar of Companies*, 1919, 1 K. B. 97).

Section 108 of the Act of 1929 requires that there be sent to the Registrar of Companies once at least in every year a return containing a list of persons who on the fourteenth day after the first or only ordinary general meeting in the year are members of the company: *i.e.* an annual

* Many prosecutions took place in 1930 for failure to hold an annual general meeting.

meeting cannot be held later in the year than 17th December. "It was no defence to the charge under Section 108, for the respondents to rely on the fact that there had been no general meeting held, the respondents themselves having been parties to the default in holding the general meeting" (*Park v. Lawton*, 1911, 1 K. B., at p. 593).

This interpretation of Section 108 [26 of Act of 1908] that an annual meeting cannot be held later in the year than the 17th December (which is also held by Palmer in *Company Precedents*, 14th Edition, 1931, at p. 707) is not held by the Registrar of Companies, who informed a shareholder that the ordinary general meeting may be held on *any* day during the calendar year (*The Law Times*, 3rd March, 1923, at p. 179). The Registrar's view is apparently based on the decision of a majority of the Court in *Smedley v. Registrar of Companies*, *ante* (Avory, J., dissenting), in which it was held that the directors had the whole of the calendar year in which to call the annual general meeting. A suggested interpretation of Section 26 (now Section 108) and Section 64 (now Section 112) is that "a general meeting of every company shall be held once at the least in every calendar year, and every such company shall once at least in every year make a list of all persons who on the fourteenth day after such meeting in the year, &c." "Meeting in the year" may mean "annual meeting" (*The Law Times*, 10th March, 1923, at p. 200). In *Park v. Lawton* (*supra*) it was held that the return under Section 26 (now Section 108) must be filed whether the meeting is held or not.

The articles generally provide that there shall be an annual general meeting for the retirement and election of directors, auditors, etc., the consideration of accounts, the declaration of dividends, and the transaction of any special business, due notice of the nature of which may have been given.

The convening of ordinary general meetings is governed by the articles, and usually the directors are the proper authority for this purpose, and the secretary the officer appointed to be the instrument of that authority. As a rule they are convened by the directors passing a resolution

at a duly constituted meeting of the board ordering that the necessary notices be issued.

Failure by directors to hold an annual general meeting may be cured by—

- (1) Table A, Clause 39, which provides that “in default of a general meeting being so held, a general meeting shall be held in the month next following, and may be convened by any two members in the same manner as nearly as possible as that in which meetings are to be convened by the directors.”
- (2) The Court may also on the application of any member call or direct the calling of a general meeting if default has been made (Section 112 (3)). The Court may also convene a statutory meeting (Section 171 (2) (a)), and also a meeting under Section 288 (1), where a winding-up petition has been presented or a winding up is going on.

III. Extraordinary General Meetings.—General meetings of the shareholders, other than ordinary meetings, are called “extraordinary general meetings” (Table A, Clause 40, *post*, p. 339). These meetings are held for the transaction of some business which ought to be done before the next ordinary meeting. They may be convened by—

- (1) The directors, in accordance with the articles ;
- (2) The directors, on requisition of the members.

The requisitionists must state the objects of the meeting ; the directors, however, fix the time, date and place of meeting.

- (3) The members, on failure of directors to convene.

The meetings convened on requisition of the members, or by members, are governed by Section 114 of the Act, which states :—

- (1) The directors of a company, notwithstanding anything in its articles, shall, on the requisition of members of the company holding at the date of the deposit of the requisition not less than one-tenth of such of the paid-up capital of the company as at the date of the deposit carries the right of voting at general meetings of the company, or, in the case of a company not having a share capital, members of the company representing not less than one-

tenth of the total voting rights of all the members having at the said date a right to vote at general meetings of the company, forthwith proceed duly to convene an extraordinary general meeting of the company.

(2) The requisition must state the objects of the meeting, and must be signed by the requisitionists and deposited at the registered office of the company, and may consist of several documents in like form, each signed by one or more requisitionists.

(3) If the directors do not within twenty-one days from the date of the deposit of the requisition proceed duly to convene a meeting, the requisitionists, or any of them representing more than one-half of the total voting rights of all of them, may themselves convene a meeting, but any meeting so convened shall not be held after the expiration of three months from the said date.

(4) A meeting convened under this section by the requisitionists shall be convened in the same manner, as nearly as possible, as that in which meetings are to be convened by directors.

(5) Any reasonable expenses incurred by the requisitionists by reason of the failure of the directors duly to convene a meeting shall be repaid to the requisitionists by the company, and any sum so repaid shall be retained by the company out of any sums due or to become due from the company by way of fees or other remuneration in respect of their services to such of the directors as were in default.

(6) For the purposes of this section, the directors shall, in the case of a meeting at which a resolution is to be proposed as a special resolution, be deemed not to have duly convened the meeting if they do not give such notice thereof as is required by Section 117 of this Act.

Where a requisition is made by holders of shares held jointly, such requisition must be signed by all the joint holders (*Patent Wood Keg Syndicate v. Pearse*, 1906, W. N. 164), and where the requisition consists of several documents it is essential that such documents shall be in exactly the same form (*Fruit & Vegetable Growers Association v. Keke-wich*, 1912, 2 Ch. 52).

IV. Rights of holders of special classes of shares.

Section 61 provides :—

(1) If in the case of a company, the share capital of which is divided into different classes of shares, provision is made by the memorandum or articles for authorising the variation of the rights attached to any class of shares in the company, subject to the consent of any specified proportion of the holders of the issued shares of that class or the sanction of a resolution passed at a separate meeting of the holders of those shares, and in pursuance

of the said provision the rights attached to any such class of shares are at any time varied, the holders of not less in the aggregate than fifteen per cent. of the issued shares of that class, being persons who did not consent to or vote in favour of the resolution for the variation, may apply to the court to have the variation cancelled, and where any such application is made, the variation shall not have effect unless and until it is confirmed by the court.

(2) An application under this section must be made within seven days after the date on which the consent was given or the resolution was passed, as the case may be, and may be made on behalf of the shareholders entitled to make the application by such one or more of their number as they may appoint in writing for the purpose.

(3) On any such application the court, after hearing the applicant and any other persons who apply to the court to be heard and appear to the court to be interested in the application, may, if it is satisfied, having regard to all the circumstances of the case, that the variation would unfairly prejudice the shareholders of the class represented by the applicant, disallow the variation and shall, if not so satisfied, confirm the variation.

(4) The decision of the court on any such application shall be final.

(5) The company shall within fifteen days after the making of an order by the court on any such application forward a copy of the order to the registrar of companies, and, if default is made in complying with this provision, the company and every officer of the company who is in default shall be liable to a default fine.

(6) The expression "variation" in this section includes abrogation, and the expression "varied" shall be construed accordingly.

NOTICE OF MEETING

A company is not corporately assembled so as to transact any business unless the meeting is convened by a proper notice which gives every member the opportunity of being present, and complies with the articles as to stating the objects for which the meeting is held (*Baillie v. Oriental Telephone Co.*, 1915, 1 Ch. 503), but see *Parker & Cooper v. Reading*, *ante*, p. 157.

The general principles affecting notices of all classes of meetings are discussed fully, *ante*, p. 11. The following remarks concern the particular law and practice governing meetings of shareholders.

Usually the articles provide as to the scope, service, and dispatch of notices of meetings.—When there is a deadlock and the board is unable to act, a meeting of the share-

holders may be convened under Section 115, *infra*, and such notices must in fact comply with the articles (*Woolf v. East Nigel Gold Mining Co.*, 1905, 21 T. L. R. 660; *re Brick & Stone Co.*, 1878, W. N. 140).

1. Due notice must be given in accordance with the articles, which generally require the notice to state hour, date, and place of meeting, all of which, although usually left by the articles to the discretion of the directors, must be reasonably convenient for the shareholders. A certain length of notice is usually provided for. In any case, the notice should clearly and explicitly state objects, time, date, and place of meeting, so that no mistake or confusion is likely to arise, fixing the time most convenient for those expected to be present or those who are usually in attendance. In the case of special business, articles usually provide that the general nature of such business must be stated.

Although the Court will not interfere with the powers and duties of directors in their management of the internal affairs of a company, directors will be restrained from fixing a particular date for holding the annual general meeting of the company for the purpose of preventing shareholders from exercising their voting powers (*Cannon v. Trask*, 1875, L. R., 20 Eq. 669).

Section 115 of the Act enacts that—

(1) The following provisions shall have effect in so far as the articles of the company do not make other provision in that behalf :—

- (a) A meeting of a company, other than a meeting for the passing of a special resolution, may be called by seven days' notice in writing ;
- (b) Notice of the meeting of a company shall be served on every member of the company in the manner in which notices are required to be served by Table A, and for the purpose of this paragraph the expression " Table A " means that Table as for the time being in force ;
- (c) Two or more members holding not less than one-tenth of the issued share capital or, if the company has not a share

- capital, not less than five per cent. in number of the members of the company may call a meeting ;
- (d) In the case of a private company two members and in the case of any other company three members, personally present, shall be a quorum ;
 - (e) Any member elected by the members present at a meeting may be chairman thereof ;
 - (f) In the case of a company originally having a share capital every member shall have one vote in respect of each share or each ten pounds of stock held by him, and in any other case every member shall have one vote.

(2) If for any reason it is impracticable to call a meeting of a company in any manner in which meetings of that company may be called, or to conduct the meeting of the company in manner prescribed by the articles or this Act, the court may, either of its own motion or on the application of any director of the company or of any member of the company who would be entitled to vote at the meeting, order a meeting of the company to be called, held and conducted in such manner as the court thinks fit, and where any such order is made may give such ancillary or consequential directions as it thinks expedient, and any meeting called, held and conducted in accordance with any such order shall for all purposes be deemed to be a meeting of the company duly called, held and conducted.

Where the articles provided that a quorum should consist of thirteen shareholders and it was found impracticable to obtain the presence of that number, the Court decided that a meeting could be held if five shareholders were personally present (*re* Edinburgh Workmen's Houses Improvement Co., 1934, S. L. T. 513).

Where under existing regulations of a company a meeting cannot be called in any event, Section 115 applies (*re* Brick & Stone Co., 1878, W. N. 140).

In the absence of any special provision the number of days must be "clear"—*i.e.* exclusive of the day of service and the day on which the meeting is held.

Table A, Clause 42 (*post*, p. 339), however, provides that, "subject to the provisions of Section 117 (2) of the Act relating to special resolutions, seven days' notice at the least (exclusive of the day on which the notice is served or deemed to be served, but inclusive of the day for which notice is given) . . . shall be given"—*i.e.* the day of

meeting may be counted in reckoning the seven days' notice, but not the day of service.

If the articles provide that general meetings are to be convened by notice through the post, a notice by advertisement would be irregular, and *vice versâ*. Table A, Clause 103 (*post*, p. 347), provides that service of a notice is deemed to have been effected at the expiration of twenty-four hours after the letter containing the same is posted. Articles commonly provide that the notice is to be deemed to be served on the day following that on which the envelope containing it is posted.

An advertisement in the newspapers convening a meeting of debenture holders under a trust deed is a sufficient notice, unless the deed expressly requires notice to be given by circular.

As to "clear day's notice," see *ante*, p. 17.

Addresses for service.—The register of members, which must by Section 95 contain the addresses of members, is *prima facie* evidence of matters therein stated (Section 102), and it is usually sufficient to take these addresses for service of notices.

Where, by the articles, a notice of call on a member may be served by sending it through the post in a letter addressed to such member at his registered place of abode, it is not necessary to follow literally the address on the register, but a substantially accurate designation of the registered place of abode is enough (*Liverpool Marine Insurance Co. v. Haughton*, 1875, 23 W. R. 93).

2. Notices must be issued by the proper authority (usually the directors) specified in the articles.—Clause 41 of Table A states :—

The directors may, whenever they think fit, convene an extraordinary general meeting, and extraordinary general meetings shall also be convened on such requisition, or, in default, may be convened by such requisitionists as provided by Section 114 of the Act. If at any time there are not within the United Kingdom sufficient directors capable of acting to form a quorum, any director or any two members of the company may convene an extraordinary general meeting in the same manner as nearly as possible as that in which meetings may be convened by the directors.

“ ‘The directors may, *whenever they think fit.*’ That means, I apprehend, that the directors may do it at a meeting properly convened. I do not think it means that any directors may, without consulting the others, call an extraordinary meeting ” (Browne *v.* La Trinidad, 1887, 37 Ch. D., p. 17).

In *re* State of Wyoming Syndicate (1901, 2 Ch. 431) it was held that where directors, as provided in Section 114, have power to convene a meeting, the directors can only act as a *board* and the secretary cannot act on his own responsibility.

A notice issued by the secretary without the authority of a resolution of the directors duly assembled at a board meeting is invalid (*re* Haycraft Gold Reduction Co., *ante*, p. 144); but a notice issued without such authority may become a good notice if adopted and ratified by a board meeting held prior to the general meeting, and this also applies to a notice issued by a so-called board meeting which was not in fact a board meeting (Harben *v.* Phillips, *ante*, p. 147).

Notices should be signed by the secretary, qualified by the words “By order of the board.” “The question is whether, although the notice was not authorised beforehand, it has been so ratified now as to make it a good and valid notice. In my opinion it has. The principle of the cases, which I do not propose to go through, is that the ratification of an act purporting to be done by an agent on your behalf dates back to the performance of the act ” (Hooper *v.* Kerr, 1900, 83 L. T., p. 730). Express ratification is essential, it will not be implied.

The secretary should therefore see that the board meeting which has authorised or ratified the convening of a general meeting was itself properly convened and that a quorum of directors was present.

The resolutions of a general meeting convened by *de facto* directors are not invalidated by any irregularity in the constitution of the board (Boschoek Co. *v.* Fuke, 1906, 1 Ch. 148). In *Ho Tung v. Man On Insurance Co.* (1902, A. C. 232), it was held that although a special resolution is the statutory mode of enacting articles of association,

the adoption thereof may be proved by a long course of acquiescence.

If the articles do not otherwise provide, two or more members holding not less than one-tenth of the issued share capital or, if the company has not a share capital, not less than five per cent. in number of the members of the company may call a meeting.

3. Subject to any limitations in the articles, all shareholders on the register are entitled to receive notice, and if any person entitled to attend is not regularly summoned such meeting is irregular and its proceedings invalid (*Dobson v. Fussy, ante, p. 12*).—At an adjourned general meeting, of which adjournment notice was given by circulars sent to the shareholders, but not by advertisement, as required by the deed of settlement, a proposition for a call was carried. A shareholder who was present and voted at the adjourned meeting was held not entitled to take advantage of the irregularity of the notice. A deed of settlement provided that in every notice convening a general meeting of the shareholders the object of the meeting should be specified. The transaction of business at the meeting foreign to the objects specified in the notice will not make the whole meeting irregular (*re British Sugar Refinery Co.*, 1857, 26 L. J. Ch. 369).

Articles often prescribe that certain classes of members shall not be entitled to receive notice: *e.g.* those who hold shares of a special or preferential character; those who are in arrears with their calls; those whose holding in the company is less than a certain amount. Otherwise all shareholders on the register are entitled to receive notices, attend general meetings and vote thereat, and even when particular classes of shareholders are merely excluded from voting at certain general meetings they are probably entitled to receive notice of, attend, and even speak at such meetings.

To guard against any possible miscarriage of a notice the following provision is generally inserted in the articles: "The accidental omission to give any such notice to any of the members shall not invalidate any resolution passed at any such meeting." Table A, Clause 43, provides that "the

accidental omission to give notice of a meeting to, or the non-receipt of notice of a meeting by, any member shall not invalidate the proceedings at any meeting."

In the absence of any provision in the articles, the executors or administrators of a member when not themselves registered as members are not entitled to notice (*Allen v. Gold Reefs of West Africa*, 1900, 1 Ch. 656), neither are preference shareholders with no right of voting (*re Mackenzie*, 1916, 2 Ch. 450). Table A, Clause 107, however, does require a notice to representative shareholders.

4. Service by post.—Section 26 of the Interpretation Act, 1889, provides that "where an Act passed after the commencement of this Act authorises or requires any document to be served by post, whether the expression 'serve' or the expression 'give' or 'send' or any other expression is used, then, unless the contrary intention appears, the service shall be deemed to be effected by properly addressing, prepaying, and posting a letter containing the document, and, unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post."

Where, under a company's articles, notice of general meetings is to be given to "members," and such notice may be served upon any "member" either personally or by sending it prepaid by post addressed to "such member" at his registered address, it is not necessary, in the case of a deceased member, either to send a notice addressed to him at his registered address, or to serve his legal personal representatives unless they have themselves become "members" by formal registration (*Allen v. Gold Reefs of West Africa*, *supra*). It is not sufficient compliance with such articles to leave the notice by hand at the registered address of the member, either by putting the notice in the letter-box or by delivery to a clerk; it must be posted in the ordinary way or delivered personally to the member.

If the officers of a company have actual knowledge that one of two joint shareholders is dead, the company cannot rely upon a formal notice sent to the registered

address of the deceased for the purpose of basing upon it a resolution forfeiting an unclaimed dividend (*Ward v. Dublin North City Milling Co.*, 1919, 1 I. R. 5).

As to service of notices of general meetings on members resident abroad, it was laid down in (*re Union Hill Silver Co.* (1870, 22 L. T., p. 403): "that the Act has reference only to shareholders who can be reached by the ordinary English post, and that, in fact, it was not necessary to serve these absent shareholders." In *re Newcastle United Football Co.* (1934, W. N. 109), the Registrar refused to find that a resolution sanctioning the alteration of objects in the memorandum of association was good on the ground that two shareholders outside the jurisdiction had not received the requisite 21 days' notice of the meeting. In granting a petition by the company to confirm the alteration, the Court said that while observing that the decision in *re Union Hill Silver Co.* (*supra*) was a decision on a section which did not appear in the Act of 1929, it would follow that decision. Accordingly, the resolution could be taken as having been properly passed. In *Dickson v. Halesowen Steel Co.* (1928, W. N. 33), it was held that a company which adopts Table A as its regulations is not bound to serve notice of a meeting on a shareholder who has no registered address in the United Kingdom.

Probably mere absence abroad will not of itself disentitle a member to notice unless it is impossible for such a notice to reach him in time so that he may attend the meeting, or his whereabouts are unknown. In any case it is desirable that members in all circumstances should always have notice of all meetings so that they may be kept fully acquainted with the work of the company.

Apart from special provision, notice by advertisement appears to be the ordinary way of summoning meetings (*Mercantile Investment Co. v. International Co.*, 1893, 1 Ch. 484*n*).

This, of course, only applies where there are no provisions in the regulations on the subject, and any difficulty regarding proof of service of notice on members resident abroad is usually surmounted by a provision in the articles that the

notice is deemed to be served on the day following that on which it is posted.

5. Notice must state the real nature of the business to be transacted.—A notice must give a sufficiently full and frank disclosure of facts upon which the meeting is asked to vote (*Baillie v. Oriental Telephone Co.*, 1915, 1 Ch. 503; *re Quebrada Copper Co.*, 1888, 40 Ch. D. 363; *Carruth v. Imperial Chemical Industries*, 1937, A. C. 707). It should specify whether the meeting is ordinary or extraordinary, and should fairly and clearly disclose the nature of any special business. The articles usually provide what is general business, *i.e.* ordinary business, which therefore does not require detailed notice thereof, though it is desirable to set out such business *in extenso* on the agenda paper. Business other than general business is special business, and requires special notice thereof. Business stated in a notice may be dropped, and a resolution which does not itself require a notice may be substituted (*Bethell v. Trench Tubeless Tyre Co.*, 1900, 1 Ch. 408). but it is better not to proceed if there is any objection to the latter course. A meeting has no power to pass any resolution outside the scope of the notice. It is material that the shareholder should know whether a special or extraordinary resolution is contemplated. See Table A, Clause 44, *post*, p. 339.

A notice of a general meeting, which by reason of its omission to refer to the matters of importance to the shareholders, did not sufficiently state the "general nature" of the business as required by the articles of association, was invalid, and the resolutions at such a meeting were not therefore duly passed (*Normandy v. Ind, Coope & Co.*, 1908, 1 Ch. 84).

The notice of an extraordinary general meeting must disclose all facts necessary to enable the shareholder receiving it to determine in his own interest whether or not he ought to attend the meeting: and the pecuniary interest of a director in the matter of a special resolution to be proposed at the meeting is a material fact for this purpose. "The application of the doctrine of *Foss v. Harbottle* (*ante*, p. 129) to joint stock companies involves as a necessary corollary

the proposition that the vote of the majority at a general meeting, as it binds both dissentient and absent shareholders, must be a vote given with the utmost fairness—that not only must the matter be fairly put before the meeting, but the meeting itself must be conducted in the fairest possible manner” (*Tiessen v. Henderson*, 1899, 1 Ch., at p. 866).

When it is proposed to pass a special or extraordinary resolution, the notice should give the terms of the intended resolution. Such a resolution need not, however, be passed in the exact terms of the notice. “If, therefore, proper and sufficient notice of the intention to propose the resolution is given, nothing more is required, and the resolution is not invalidated if, owing to an amendment at the first meeting, the resolution passed is not identical with that of the notice” (*Torbock v. Westbury* (Lord), 1902, 2 Ch., p. 874). But a special resolution no longer requires the convening of two meetings (see Section 117, *post*, p. 213).

Similarly, when it is intended to proceed under any particular section of the Act, that section should be clearly indicated in the notice. In fine, every shareholder is entitled to be informed of the express purpose of every meeting.

6. Special business.—Table A, Clause 42, provides that—

In case of special business [defined in Clause 44, *post*] the general nature of that business shall be given in manner hereinafter mentioned, or in such other manner, if any, as may be prescribed by the company in general meeting, to such persons as are, under the regulations of the company, entitled to receive such notices from the company.

An ordinary meeting may transact special business if the notice provides for it (*Graham v. Van Diemen's Land Co.*, 1856, 26 L. J. Ex. 73) and there is nothing in the regulations confining special business to extraordinary meetings. Unless the purport of the special business to be transacted is stated in the notice convening the meeting, the meeting is invalid so far as the special business is concerned (*Lawes's Case*, 1852, 1 De G. M. & G. 421 ; *Kaye v. Croydon Tramways Co.*, 1898, 1 Ch. 358).

It is not sufficient in a notice of an extraordinary meeting to state merely that "special" business will be transacted (*Wills v. Murray*, 1850, 4 Ex. 869).

7. The Courts do not construe the notices with excessive strictness (*Wright's Case*, 1871, L. R. 12, Eq. 345*n*); they must, however, substantially comply with the articles, and their meaning must be sufficiently clear to the average business man; they must fairly state the purposes for which the meetings are convened, so that every shareholder may reasonably make up his mind whether he will or will not attend with knowledge of the result of his act. There is nothing to prevent an explanatory letter being sent round as suggested in *Young v. South African &c. Syndicate* (1896, 2 Ch. 268) showing the purpose of the resolution, in which case the circular and the notice will be read together. In this case the notice, stating that the object of the meeting was to adopt new regulations in place of Table A, but not setting out the contents of the new regulations, was held to be valid. "In cases of this kind it is settled that the notice which specifies the business to be done, or the objects of the meeting, is to be a fair notice, intelligible to the minds of ordinary men—the class of men who are shareholders in the company, and to whom it is addressed. The Court does not scrutinise these notices with a view to exercise criticism, or to find out defects, but it looks at them fairly" (*Henderson v. Bank of Australasia*, 1890, 45 Ch. D., p. 337).

A notice of two meetings to be held in immediate succession to consider *seriatim* two alternative resolutions (one at each meeting) is not rendered an invalid notice of the second meeting by an express provision that it will only be held in the event of the first resolution not being passed at the first meeting (*Tiessen v. Henderson*, 1899, 1 Ch. 861). It should be noted, however, that special resolutions no longer require the convening of two meetings as formerly (see Section 117, *post*, p. 213).

8. Notice must be definite, and not contingent unless the articles sanction such an one.—"A conditional notice is not a sufficient notice" (*Alexander v. Simpson*, 1890, 43 Ch. D., p. 144).

9. Notice of a meeting adjourned to a fixed date is not necessary (Kerr v. Wilkie, 1860, 1 L. T. 501) unless the articles otherwise provide. Table A, Clause 49, provides that—

When a meeting is adjourned for ten days or more, notice of the adjourned meeting shall be given as in the case of an original meeting.

When a meeting is adjourned it is customary to fix the day and time for the adjourned meeting. When the adjournment does not exceed the time specified in the articles, notice is not necessary; but when adjourned *sine die* notice, of course, is always necessary.

At an adjourned meeting business which was unfinished at the first meeting may alone be transacted. To transact other business a separate meeting should be convened to be held immediately after the adjourned meeting.

And Table A, Clause 49, provides that—

No business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.

But as regards the statutory meeting Section 113, Subsection (8), provides that notice may be given of any resolution to be considered at the adjourned meeting, and such resolution may be passed of which notice has been given in accordance with the articles.

An adjourned meeting is merely a continuation of the original meeting, and if any notices have to be given before the *meeting* these must be given before the original meeting (see Catesby v. Burnett, *post*, p. 221). The proper course to adopt is to convene another meeting to follow the adjourned meeting, and to take the new business of which special notice has been given in the interval between the original meeting and the adjourned meeting. As to date of resolution passed at an adjourned meeting, see *post*, p. 218.

10. Notice need not be given of amendments to ordinary resolutions unless they materially and

fundamentally alter the resolution.—The convening of two meetings for the purpose of passing a special resolution is no longer required (see Section 117). No amendment can be moved which goes beyond the notice convening the meeting, or in the case of an ordinary meeting, beyond the scope of the ordinary business which, by the articles, may be transacted thereat without special notice. But it is not competent to a meeting to drop the resolution as stated in the notice and to substitute another resolution of which notice should have been given (*re Teede & Bishop*, 1901, 70 L. J., Ch. 409); and where the notice deals with two separate resolutions the failure of the one will not invalidate the other, even in cases where they are closely associated (*Cleve v. Financial Corporation*, 1873, L. R., 16 Eq. 363).

11. Notices must be read in reference to the memorandum and articles.—Shareholders are presumed to know the Act of Parliament and also the terms of the memorandum and articles. Notices, therefore, must be read in reference to these documents (*Campbell's Case*, 1873, L. R., 9 Ch. 1). Also see Table A, Clauses 103 to 107, *post*, p. 347.

12. Invalid notice cannot be cured by acquiescence of shareholders.—Where the notices convening a meeting did not disclose the contents of the agreement which formed the subject of the resolution it was held that such a resolution, although adopted by the requisite majority, was invalid and incapable of being made valid by acquiescence on the part of shareholders (*Pacific Coast Coal Mines v. Arbuthnot*, 1917, A. C. 608; *Hughes v. Union Cold Storage Co.* 1934, 78 S. J. 551), but where *all the members* are present and none object to the informality, want of notice will be excused and the proceedings cannot afterwards be invalidated on that ground (*Machell v. Nevinson*, *ante*, p. 14). An extraordinary resolution under Section 225 for winding up a company is not invalid by reason of non-compliance with Section 117 as to notice, provided that all the shareholders are present at the meeting and assent to waiver of the requirement as to notice (*re Oxted Motor Co.*, 1921, 3 K. B. 82).

But the invalidity of a meeting will not affect persons dealing with the company who have no actual or constructive notice of the invalidity (*Royal British Bank v. Turquand*, 1856, 6 E. & B. 327; *Wandsworth Gas Light Co. v. Wright*, 2870, 22 L. T. 404; *Irvine v. Union Bank of Australia*, 1877, 1 App. Cas. 366), and there is nothing to prevent the acts done at an invalid meeting being ratified at a subsequent meeting, provided the latter meeting is held within a reasonable time of the former (*re Portuguese Copper Mines*, 1889, 42 Ch. D. 160).

The mere presence at the meeting of non-members who neither take any active part nor attempt to exercise any voting power does not by itself appear to invalidate a meeting (*re Quinn & National Catholic &c. Assoc.*, 1921, 2 Ch., p. 323; *Carruth v. Imperial Chemical Industries*, 1937, A. C. 707).

13. Shareholders may ratify an *ultra vires* act of the directors if *intra vires* the company.—The directors of a company are not entitled, without the authority of a general meeting, to present a winding-up petition in the name of the company. Where directors have presented a winding-up petition in the name of the company without authority, it is open to a general meeting of shareholders to ratify their action (*re Galway, &c., Tramways Co.*, 1918, 1 I. R. 62).

14. Authentication of Notices.—A notice must be properly authenticated, and Section 33 of the Act provides that a document requiring authentication by a company may be signed by a director, secretary, or other authorised officer of the company, and need not be under its common seal. Section 380 provides that a *document* includes a *notice*. It is probable that Section 33 does not imply that the signature of the authorised person must be a personal one; it may be by some agent (*re Whitley Partners*, 1886, 32 Ch. D. 337); but in order to comply with Section 140, such agent must be authorised in writing.

CHAPTER XVII

MEETINGS OF SHAREHOLDERS

CONSTITUTION OF GENERAL MEETINGS

TO constitute a general meeting it is essential—

- (1) That the properly appointed person is in the chair—the chairman is necessarily an integral part of a meeting ;
- (2) That a quorum is present.

THE CHAIRMAN

1. Appointment.—The articles generally provide that the chairman of the board of directors shall be chairman of general meetings, or in his absence some other director. If no director is willing to act as chairman, the meeting itself can select some person from amongst the members present. A person who is not a member of the company can usually be neither a chairman nor present at a meeting (*Blair Open Hearth Furnace Co. v. Reigart, post, p. 181*), but usually a chairman remains in office whether he is a member or not until his successor is appointed (*R. v. Jackson, 1913, 3 K. B. 436*).

Table A states :—

47. The chairman, if any, of the board of directors shall preside as chairman at every general meeting of the company.

48. If there is no such chairman, or if at any meeting he is not present within fifteen minutes after the time appointed for holding the meeting or is unwilling to act as chairman, the members present shall choose some one of their number to be chairman.

But where there are no regulations on the subject in the articles, Section 115 permits any member elected by the members present to act as chairman.

Section 116 provides :—

(1) A corporation, whether a company within the meaning of this Act or not, may—

- (a) If it is a member of another corporation, being a company within the meaning of this Act, by resolution of its directors or other governing body authorise such person as it thinks fit to act as its representative at any meeting of the company or at any meeting of any class of members of the company.
 - (b) If it is a creditor (including a holder of debentures) of another corporation, being a company within the meaning of this Act, by resolution of its directors or other governing body authorise such person as it thinks fit to act as its representative at any meeting of any creditors of the company held in pursuance of this Act or of any rules made thereunder, or in pursuance of the provisions contained in any debenture or trust deed, as the case may be.
- (2) A person authorised as aforesaid shall be entitled to exercise the same powers on behalf of the corporation which he represents as that corporation could exercise if it were an individual shareholder, creditor, or holder of debentures of that other company.

In these circumstances a person not a shareholder may be present at a general meeting and may conceivably be elected chairman. This section now applies to foreign corporations, as it is so worded as to do away with the decision of *Blair Open Hearth Furnace Co. v. Reigart* (1913, 108 L. T. 665) on this point. A foreign company may therefore appoint a representative. In *re Kelantan Coco Nut Estates, Limited* (1920, W. N. 274), articles provided that *two members personally present shall be a quorum*. One member of the company and one representative of a company under Section 116 were present. It was held that the meeting was validly constituted.

2. Authority.—The authority which a chairman has is usually delegated to him by the company through its articles. Where a number of persons assemble and put a man in the chair they devolve on him by agreement the conduct of that body. They attorn to him, as it were, and give him the whole power of regulating themselves individually. In general, a chairman often forgets when presiding over a general meeting of shareholders that he is acting as its representative and not that of the directors. As his authority, apart from the articles, must be collected from the meeting, it follows that in case of division of opinion the majority

is supreme, provided that such majority acts *bonâ fide* and is not endeavouring to coerce the minority. At a meeting of shareholders it is not competent for a majority to come determined to vote in a particular way on any question and to refuse to hear any arguments to the contrary. When the views of the minority have been heard, it is competent to the chairman, with the sanction of a vote of the meeting, to declare the discussion closed, and to put the question to the vote. For a majority of shareholders to say "we do not care what one shareholder may say, we being the majority will do what we please" is what the Court will not allow (*Const v. Harris*, 1824, T. & R. 496) and what a chairman should prohibit.

3. Duties.—Unquestionably it is the duty of the chairman to preserve order; to conduct the proceedings in a proper manner; and to take care that the sense of the meeting is properly ascertained with regard to any question which is properly before the meeting. (*National Dwellings Society v. Sykes*, 1894, 3 Ch. 159; see *ante*, p. 30.)

The real object of a meeting is not so much to discuss matters, as to come to a decision on any question which is properly before it. "It is on him" [the chairman] "that it devolves both to preserve order in the meeting and to regulate the proceedings so as to give all persons entitled a reasonable opportunity of voting. He is to do the acts necessary for these purposes on his own responsibility, and subject to being called upon to answer for his conduct if he has done anything improperly" (*R. v. D'Oyly*, 1840, 12 A. & E., p. 159).

In the absence of express provisions in the regulations, "the details of the proceedings must be regulated by the persons present and by the chairman, and if his decision is quarrelled with it must be regulated by the majority of those present" (*Wandsworth Gas Light Co. v. Wright*, 1870, 22 L. T., p. 405). But where the articles expressly provide for the conduct of meetings, the provisions contained therein must be followed.

4. Powers.—The chairman must exercise his powers

discreetly and impartially, as any improper use of them or want of good faith might put him in an invidious position. It is his duty to conduct the meeting in such a way that the business thereof may be facilitated and the results clearly and well defined. It is the bounden duty of a chairman to maintain his ruling on points of procedure (*Henderson v. Bank of Australasia*, 1890, 45 Ch. D., p. 350). But if the chairman's ruling be wrong he is, of course, subject to being called upon to answer for his conduct, and legal proceedings may follow which may result in declaring the proceedings invalid (*Catesby v. Burnett*, *post*, p. 221).

If the chairman wisely or unwisely takes responsibility, he must necessarily take the consequences. If he acts reasonably, impartially, *bonâ fide* and in the interests of the meeting, paying some regard to the rights of minorities, he will usually steer clear of those risks which every fair-minded chairman avoids, particularly if he remembers that, apart from the articles, he collects his authority from the meeting.

If a chairman in refusing to put a resolution acts without malice, no action lies against him, although he may have committed an error of judgment. Where a shareholder considers the ruling of the chairman to be erroneous, the proper course is to bring an action against the chairman and the directors asking for an injunction restraining the chairman from refusing to put the resolution and for a mandamus to compel them to convene a fresh meeting (*Breay v. Browne*, 1897, 41 S. J. 159; *Pender v. Lushington*, 1877, 6 Ch. D. 70).

(a) To regulate the speaking and decide points of order :—

Primâ facie every shareholder has a right to be heard on every question (*Const v. Harris*, *ante*, p. 182), but where a shareholder has spoken for a reasonable time it will be competent for the chairman, at all events with the assent of the meeting, to apply the closure (*Wall v. London & Northern Assets Corporation*, *ante*, p. 61).

(1) In case of dispute he is entitled to determine who

should address the meeting, and protect the speaker from interruption.

- (2) All incidental questions—*e.g.* points of order—should be decided with the utmost impartiality and fairness, having due regard to the rights of minorities.

The chairman of a general meeting has *primâ facie* authority to decide all incidental questions which arise at such meeting and necessarily require decision at the time, and the entry by him in the minute book of the result of a poll, or of his decision of all such questions, although not conclusive, is *primâ facie* evidence of that result, or of the correctness of that decision, and the *onus* of displacing that evidence is thrown on those who impeach the entry (*re* Indian Zoedone Co., 1884, 26 Ch. D. 70). His decision, if challenged, should be challenged at once at the meeting itself.

- (3) The business transacted *must fairly come within the scope of the notice given*, and it is the undoubted duty of the chairman to decide whether any proposed resolution falls within the scope of the notice. But he is bound to allow the proposal of all legitimate and germane resolutions and amendments, and a refusal to do so will invalidate the proceedings, because such refusal may amount to the withdrawal of a material and relevant question from the meeting. "I think, then, that the chairman was entirely wrong in refusing to put the amendment, and that the resolutions which were passed cannot be allowed to stand, because the chairman, under a mistaken idea as to what the law was which ought to have regulated his conduct, prevented a material question from being brought before the meeting" (Cotton, L. J., in *Henderson v. Bank of Australasia*, 45 Ch. D., p. 346).

Resolutions and amendments thereto must come within the scope of the notice convening the meeting and conform to any provisions of the articles as

to notice or other requirements. Much difficulty and danger to the chairman at times arise from amendments as to relevancy and to notice. If notice is required in respect of a resolution it is probable that notice of a relevant amendment thereto is not necessary in the absence of provisions in the articles. After any motion, including a substantive motion, has been accepted by the meeting, no amendment inconsistent with it should be submitted, as the acceptance of the prior proposal negatives the inconsistent amendment—assuming, of course, that all relevant amendments have been properly disposed of before the original motion. When the chairman rules an amendment out of order there is no obligation on the part of the mover of the amendment to contest that ruling or to leave the meeting. It is not necessary for the latter to keep up an altercation with the chairman, nor does he lose his right by acting under the ruling of the chairman (*Henderson v. Bank of Australasia, ante*).

Where notice has been given of several resolutions, each resolution must, if any member so requires, be put separately and not *en bloc*; the poll thereon must in any event be taken separately (*Blair Open Hearth Furnace Co. v. Reigart, 1913, 108 L. T. 665*).

If there is the slightest doubt as to whether an amendment is in order or not, it should be allowed to be put; this will safeguard the ultimate resolution if it turns out in the end that the amendment is in fact relevant and germane to the resolution. The chairman has often to make up his mind at once upon the validity of amendments, and when he is fairly certain that the amendment will be lost there is no real harm done in allowing an amendment which he thinks, with some hesitation, is *ultra vires*. Chairmen too often reject amendments which have no chance of success, thereby endangering the ultimate

resolution on the ground of some apparent small technical objection, which may have no substance in fact.

- (b) *Chairman's declaration as to the result of voting*, in the absence of a poll on an extraordinary or special resolution, is conclusive. Section 117, Sub-section (3), of the Act, and Table A, Clause 50, extends this effect of the chairman's declaration to ordinary resolutions. This will prevent any question being reopened in legal proceedings even if evidence is forthcoming that the chairman's declaration was wrong (*Arnot v. United African Lands*, 1901, 1 Ch. 518), unless there is an apparent error, *e.g.* where he states the number of votes given and they are insufficient (*re Caratal New Mines*, 1902, 2 Ch. 498) or it is plain on the face of the proceedings that the requisite majority has not been obtained (*re John T. Clark & Co.*, *post*, p. 217).

Where articles provided that if votes were not disallowed at the meeting they should be good for all purposes, it was held in *Wall v. London & Northern Assets Corporation* (No. 2) (1899, 1 Ch. 550) that in the absence of bad faith or fraud the resolution could not be afterwards impeached on the ground that votes were improperly received. In *Wall v. Exchange Investment Corporation* (1926, Ch. 143) it was held that the decision of the chairman who, in the *bonâ fide* exercise of the power conferred upon him by the articles, had refused to disallow a vote by proxy to which objection had been taken at the meeting, was final and would not be reviewed by the Court, but in *Betts & Co. v. Macnaghten* (1910, 1 Ch. 430) it was held that, notwithstanding a declaration by the chairman, the notice of the meeting may be looked at to see if the resolution is in order. Neither is a chairman's declaration conclusive where there is no quorum, since there would be no meeting, and a chairman has no *locus standi* except at a meeting, *i.e.* a properly constituted meeting.

- (c) *To close meeting for persistent disorder.*—If the chairman is unable to repress persistent disorder, he should quit the chair and adjourn the meeting, but this course should only be adopted when the meeting is quite out of hand. Sometimes an adjournment for a short period—*e.g.* half an hour—is effective.
- (d) *To apply the closure with consent of meeting.*—At a meeting of shareholders it is not competent for the majority to come determined to vote in a particular way on any question, and to refuse to hear any arguments to the contrary; but when the views of the minority have been heard, it is competent to the chairman, with the sanction of a vote of the meeting, to declare the discussion closed, and to put the question to the vote (*Wall v. London & Northern Assets Corporation*, 1898, 2 Ch. 469).
- (e) *To adjourn the meeting.*—Table A, Clause 49, states that the chairman “may” adjourn, and, where the articles contain this provision, the chairman has a discretion, and may decline to adjourn. An article of association provided that “the chairman may, with the consent of the members present at any meeting, adjourn the same.” It was held upon the true construction thereof that the chairman is not bound to adjourn a meeting, even though a majority of those present desire the adjournment (*Salisbury Gold Mining Co. v. Hathorn*, 1897, A. C. 268).

The chairman has no power to stop or adjourn a meeting capriciously. See *National Dwellings Society v. Sykes* (1894, 3 Ch. 159); *Catesby v. Burnett* (1916, 2 Ch. 325).

“Where a chairman frustrates the business of a meeting by wilfully and without good reason preventing that business from being considered, the meeting may in view of his gross violation of duty supersede him as chairman and go on to transact the business. But if in good faith the chairman gives a decision upon a matter of difficulty, such as has arisen in connection with the notice in this case, I am not prepared

to hold that his decision can be ignored and overturned there and then. In my opinion in such a case his decision must stand until it is set aside by the Court, or by a general meeting properly convened for that purpose" (*Melville v. Graham-Yooll*, 1936, S. L. T. 54).

- (f) *Casting vote.*—*The chairman has no casting vote at Common Law.*—To give him this power it must be provided for in the articles. "When, as the result of the chairman's giving his vote, the numbers on either side become exactly equal, the Common Law appears to have provided no way out of the difficulty" (*Nell v. Longbottom*, 1894, 1 Q. B., p. 771). A casting vote may be exercised only if there is an equality of votes, *i.e.* equality of valid votes. If the chairman does not exercise his casting vote, the motion, of course, is not carried. A chairman has always an ordinary vote if he is a member of the company, as invariably he is. A chairman may give a contingent or hypothetical vote, to come into operation if in the course of subsequent proceedings it should appear that there has been an equality of valid votes (*Bland v. Buchanan*, 1901, 2 K. B. 75).

In the rare cases where the chairman is not in fact a shareholder, but by virtue of his office as chairman of directors he is also chairman of general meeting, he has only a casting vote, *i.e.* if the articles make such provision; and he has no right to vote as an ordinary member. See Table A, Clause 52, *post*, p. 341.

In *re Hackney Pavilion, Limited* (1924, 1 Ch. 276), the articles provided that the directors should have power to decline a transfer, and that the chairman thereof should not have a casting vote. A transfer was submitted to the board and the voting for and against registration was equal. The secretary wrote to the transferee stating that registration had been declined by the directors. The Court held that in the circumstances the directors had not declined registration; that the transferee was entitled to registration,

following *re* T. H. Saunders & Co. (1908, 1 Ch. 415); and that the Court had power to rectify the register by inserting the name of the transferee.

QUORUM

Whenever a certain number are incorporated, a major part may do any corporate act; so if all are summoned and part appear, a major part of those that appear may do a corporate act (*Attorney-General v. Davy*, 1741, 2 Atk. 212), but if the articles prescribe a quorum, no less number of members can do business (*Howbeach Coal Co. v. Teague*, *post*, p. 190). The assent of every member of a company given separately has not the same effect as a resolution passed at a general meeting (*re George Newman*, 1895, 1 Ch. 674), but in *Baroness Wenlock v. River Dee Co.* (1883, 36 Ch. D., at p. 681), in a case where the act was within the powers of a corporation, it was said "the Court would never allow it to be said, that there was an absence of resolution when all the shareholders and not only a majority have *expressly* assented to that which is being done," and see *Parker & Cooper v. Reading* (*ante*, p. 157).

Articles generally make provision as to the number of members which will constitute a quorum, see *Ernest v. Loma Gold Mines Co.* (1897, 1 Ch. 1). Proxies are counted at a poll, if the articles so permit.

Table A, Clause 45, provides :—

45. No business shall be transacted at any general meeting unless a quorum of members is present at the time when the meeting proceeds to business; save as herein otherwise provided, three members personally present shall be a quorum.

Section 115 of the Act provides :—

115. (1) (d) in the case of a private company two members, and in the case of any other company three members, personally present shall be a quorum.

1. Effect of transacting business without a quorum.

—The prescribed quorum—whatever it may be—must be present *before* a meeting can proceed to business. Any resolution passed at a meeting where no quorum was present

is invalid (*Howbeach Coal Co. v. Teague*, 1860, 5 H. & N. 151; *re Cambrian Peat Co.*, 1874, 31 L. T. 773).

Articles provided that no business should be transacted at a general meeting unless a quorum, consisting of two members, was present. At a general meeting, which was attended by two persons, one a shareholder, the other the executor of a deceased shareholder, who was entitled to be entered on the register as a shareholder, but had not in fact been registered, a resolution was passed which fixed the remuneration of L, a director, at £8 a week. Subsequently a receiver was appointed and he sought a declaration that the directors were liable to pay to the company the sum of £568 which had been paid to L under the invalid resolution. It was held that the directors were jointly and severally liable to repay that sum to the company (*re Franklin & Son*, 1937, 157 L. T. 188, and see *re Phosphate of Lime Co.*, 1871, 24 L. T. 932).

2. One person cannot usually constitute a meeting.—

If there be no provision in the articles a quorum consists of two persons. At a meeting of a company only one shareholder attended, who held the proxies of the other shareholders. He took the chair and concluded the proceedings by proposing a vote of thanks to himself. There being no "meeting" it followed that all resolutions "passed" thereat were invalid and the vote of thanks out of order. "It is clear that, according to the ordinary use of the English language, a meeting could no more be constituted by one person than a meeting could have been constituted if no shareholder at all had attended" (*Sharp v. Dawes*, 1876, 2 Q. B. D., p. 29). In *re Sanitary Carbon Co.* (1877, W. N. 223) it was held, following *Sharp v. Dawes*, that a meeting of a company attended by one shareholder only, he being the proxy of *all* the other members, is not validly constituted, but see *Daimler Co. v. Continental Tyre Co.* (1916, 2 A. C., at p. 324), where one member who attended holding several proxies was held to count for the purposes of a quorum. The article in this case followed in principle Table A, Clause 46, and a definition clause provided that words importing the singular only include the plural and vice versa.

If proxies by the articles may be held by non-members of the company, it is probable that the presence of one member and one non-member holding proxies would constitute a meeting where a quorum consisted of two persons.

A company by its memorandum required the sanction of preference shareholders by resolution at a separate meeting of such holders specially summoned before an increase of capital could be made. All preference shares were held by one person, who signed a document in the minute book recording his assent to the issue. It was held that the word "meeting" in the memorandum must be taken to have been used not in its strict sense, but as applicable to the case of a single shareholder. "In an ordinary case I think it is quite clear that a meeting must consist of more than one person. . . . I think I may very fairly say that where one person only is the holder of all the shares of a particular class, and as that person cannot meet himself, or form a meeting with himself in the ordinary sense, the persons who framed this memorandum having such a position in contemplation must be taken to have used the word meeting not in the strict sense in which it is usually used, but as including the case of one single shareholder" (*East v. Bennett Bros., Limited*, 1911, 1 Ch., pp. 168-170; see also *ante*, p. 39).

The physical presence of a quorum does not necessarily constitute a meeting unless there was an intention to meet either by previous notice or arrangement (*Barron v. Potter*, *ante*, p. 132). See *re Kelantan Coco Nut Estates, Limited* (*ante*, p. 181), where a quorum consisted of one member and one representative appointed under Section 68 of the Act of 1908 (now Section 116).

3. Constitution of quorum.—Unless the articles otherwise provide—

- (1) The quorum must consist of members entitled to be present and to vote. The usual practice is to send admission cards to members entitled to attend.
- (2) Proxies cannot be counted in a quorum. Articles,

however, often provide for a quorum "present in person or by proxy." Where one member only is in attendance and the articles provide for the quorum of a meeting a larger number "present in person or by proxy" it is doubtful whether proxies can be relied upon to constitute a "meeting" (*Sharp v. Dawes*, 1876, 2 Q. B. D. 29), unless it is a special "class" meeting (*East v. Bennett Bros., Limited*, *ante*, p. 191), and he is the only member of that class, in which case there would, of course, be no proxies, since he alone would constitute the class. At a meeting of the shareholders of a company, the articles of which allow voting by proxy, the chairman, in ascertaining the number of votes given on a show of hands, must count the vote of each person who holds proxies as a single vote, and not count a vote for each of the members whose proxies he holds (*Ernest v. Loma Gold Mines Co.*, 1897, 1 Ch. 1).

- (3) Joint holders of shares in a private company are treated as a single member (Section 26, Sub-section (2), of the Act).

It is necessary to make special provision as in Table A, Clause 105, that a notice of a meeting is effective if given to the joint holder named first in the register, which is the usual practice.

- (4) Where there is a quorum at the beginning of the meeting, such meeting cannot transact any business after the members present have ceased to be sufficient to constitute a quorum (*Henderson v. Louttit*, 1894, 21 R. 674), *i.e.* no business can be transacted in the absence of a quorum.

4. Special class quorum.—See Section 61, *ante*, p. 165.

At all class meetings, whether adjourned or not, where Clause 3 of Table A applies, the quorum must be three-fourths (*Hemans v. Hotchkiss Ordnance Co.*, 1899, 1 Ch. 115).

5. Quorum when attendance of specified number impossible.—When the attendance of the prescribed

quorum is a physical impossibility, owing to there not being sufficient members to comply with the requirement, the presence of all the members would probably constitute a quorum, provided there were at least two members present.

In *re Sly, Spink & Co.* (1911, 2 Ch. 436) it was held that the provision that a quorum of a board of four may act does not make legitimate acts by a board consisting of less than four members. This raises a practical difficulty both in regard to board and general meetings; and in case of death or other disability causing the number of directors or members to fall below the minimum the articles should provide that the remaining directors or members may act solely for the purpose of filling up the vacancy or vacancies. If no such provision were made, it would probably be competent for the remaining directors to act for this purpose only. At the same time such procedure would be somewhat irregular. The articles might be altered by special resolution to make this necessary provision, the meetings being convened under Section 114. *Barron v. Potter* (*ante*, p. 132) provides for this contingency, and is the better course to adopt.

6. Meeting adjourned till later date if quorum not assembled in time.—The articles generally contain a clause similar to Clause 46 of Table A, which see *post*, p. 340.

7. Circumstances in which company authorised to conduct meeting with less than appointed quorum.—When it is impracticable to call a meeting of a company in any manner in which meetings may be called, or if it is impracticable to conduct a meeting of the company in the manner prescribed by statute, it is legitimate to apply to the Court, and on such application the Court may find a remedy by defining how a meeting may be conducted. If the meeting is conducted in terms of that authorisation, then the proceedings of the meeting will be as good as if the terms of the articles had been complied with (*re Edinburgh Workmen's Houses Improvements Co.*, 1934, S. L. T. 513).

CHAPTER XVIII

MEETINGS OF SHAREHOLDERS

THE AGENDA PAPER

AS a rule the business of the meeting should be transacted in the order in which it occurs in the agenda paper, but with the consent of the meeting this order may be varied. Of course, amendments, irrespective of their position on the agenda paper, should be taken during the discussion of the questions which they propose to amend.

Ordinary business (*e.g.* adoption of reports, election of directors and auditors, declaration of dividends) transacted at general meetings usually requires only the passing of an ordinary resolution, *i.e.* by a bare majority of those present and entitled to vote and voting.

PROCEEDINGS AT GENERAL MEETINGS

1. Reading the notice convening the meeting and the auditors' report.—Meetings are usually opened by the secretary reading the notice convening the meeting together with the auditors' report (Section 129) which must in all circumstances *be read, not taken as read*. There is, of course, no statutory requirement for reading the notice, although it is usual, more especially at meetings of companies. It seems somewhat superfluous to read a notice with which everyone present is usually perfectly familiar, and without knowledge of which he would not have attended the meeting. On the other hand, judicial notice has been taken of the fact that notices are usually read or taken as read. *Notice taken as read*—"It appears from the minutes that the notice convening the meeting was taken as read. The duty of the secretary being to record accurately what takes place at a meeting, he either sets out the notice in the minutes or makes an entry therein sufficient to identify any document which is read or taken as read at a meeting of this character. The mere fact that the shareholders dispense with the actual reading of the

document (i.e. notice of meeting), the language of which is quite familiar to them, does not, in my opinion, do away with the necessity of treating that document as having formed part of what was referred to and dealt with at the meeting" (*Betts & Co., Limited v. Macnaghten*, 1910, 1 Ch., at p. 434). It is apparently, however, an almost universal practice of company meetings, and such a reading of the notice provides a convenient opportunity to gauge the temper and feeling of the meeting. Sometimes the minutes of the previous meeting are then read and formally verified as correct, but, unless specially required by the regulations, this proceeding at a general meeting is perhaps somewhat unnecessary.

Section 134 of the Act provides :—

(1) The auditors shall make a report to the members on the accounts examined by them, and on every balance sheet laid before the company in general meeting during their tenure of office, and the report shall state—

- (a) Whether or not they have obtained all the information and explanations they have required ; and
- (b) Whether, in their opinion, the balance sheet referred to in the report is properly drawn up so as to exhibit a true and correct view of the state of the company's affairs according to the best of their information and the explanations given to them, and as shown by the books of the company.

[*Make a report to the members*, i.e. the members assembled at the general meeting, and the duty of the auditors is confined to forwarding their report to the secretary of the company (*re Allen, Craig & Co.*, 1934, 1 Ch. 483).]

(2) Every auditor of a company shall have a right of access at all times to the books and accounts and vouchers of the company, and shall be entitled to require from the directors and officers of the company such information and explanation as may be necessary for the performance of the duties of the auditors :

Provided that, in the case of a banking company which was registered after the 15th day of August, 1879, and which has branch banks beyond the limits of Europe, it shall be sufficient if the auditor is allowed access to such copies and extracts from such books and accounts of any such branch as have been transmitted to the head office of the company in Great Britain.

(3) The auditors of a company shall be entitled to attend any general meeting of the company at which any accounts which have

been examined or reported on by them are to be laid before the company and to make any statement or explanation they desire with respect to the accounts.

Section 129 of the Act provides :—

(1) Every balance sheet of a company shall be signed on behalf of the board by two of the directors of the company, or, if there is only one director, by that director, and the auditors' report shall be attached to the balance sheet and the report shall be read before the company in general meeting, and shall be open to inspection by any member.

(2) In the case of a banking company registered after the fifteenth day of August, eighteen hundred and seventy-nine, the balance sheet must be signed by the secretary or manager, if any, and where there are more than three directors of the company by at least three of those directors, and where there are not more than three directors by all the directors.

(3) If any copy of a balance sheet which has not been signed as required by this section is issued, circulated, or published, or if any copy of a balance sheet is issued, circulated, or published without having a copy of the auditors' report attached thereto, the company, and every director, manager, secretary, or other officer of the company who is knowingly a party to the default, shall on conviction be liable to a fine not exceeding fifty pounds.

Section 130 of the Act provides :—

(1) In the case of a company not being a private company—

(a) A copy of every balance sheet (including every document required by law to be annexed thereto) which is to be laid before the company in general meeting, together with a copy of the auditors' report, shall, not less than seven days before the date of the meeting, be sent to all persons entitled to receive notices of general meetings of the company.

(b) Any member of the company, whether he is or is not entitled to have sent to him copies of the company's balance sheets, and any holder of debentures of the company, shall be entitled to be furnished on demand without charge with a copy of the last balance sheet of the company, including every document required by law to be annexed thereto, together with a copy of the auditor's report on the balance sheet.

If default is made in complying with paragraph (a) of this sub-section, the company and every officer of the company who is in default shall be liable to a fine not exceeding twenty pounds, and if, where any person makes a demand for a document with

which he is by virtue of paragraph (b) of this sub-section entitled to be furnished, default is made in complying with the demand within seven days after the making thereof, the company and every director, manager, secretary, or other officer of the company who is knowingly a party to the default shall be liable to a fine not exceeding five pounds for every day during which the default continues, unless it is proved that that person has already made a demand for and been furnished with a copy of the document.

(2) In the case of a company being a private company, any member shall be entitled to be furnished, within seven days after he has made a request in that behalf to the company, with a copy of the balance sheet and auditors' report at a charge not exceeding sixpence for every hundred words.

If default is made in furnishing such a copy to any member who demands it and tenders to the company the amount of the proper charge therefor, the company and every officer of the company who is in default shall be liable to a default fine.

2. Profit and loss account and balance sheet.—
Section 123 provides :—

(1) The directors of every company shall at some date not later than eighteen months after the incorporation of the company and subsequently once at least in every calendar year lay before the company in general meeting a profit and loss account or, in the case of a company not trading for profit, an income and expenditure account for the period, in the case of the first account, since the incorporation of the company, and, in any other case, since the preceding account, made up to a date not earlier than the date of the meeting by more than nine months, or, in the case of a company carrying on business or having interests abroad, by more than twelve months :

Provided that the Board of Trade, if for any special reason they think fit so to do, may, in the case of any company, extend the period of eighteen months aforesaid, and in the case of any company and with respect to any year extend the periods of nine and twelve months aforesaid.

(2) The directors shall cause to be made out in every calendar year, and to be laid before the company in general meeting, a balance sheet as at the date to which the profit and loss account, or the income and expenditure account, as the case may be, is made up, and there shall be attached to every such balance sheet a report by the directors with respect to the state of the company's affairs, the amount, if any, which they recommend should be paid by way of dividend, and the amount, if any, which they propose to carry to the reserve fund, general reserve or reserve account shown specifically on the balance sheet, or to a reserve fund, general reserve or reserve account to be shown specifically on a subsequent balance sheet.

(3) If any person being a director of a company fails to take all reasonable steps to comply with the provisions of this section, he shall, in respect of each offence, be liable on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding two hundred pounds :

Provided that a person shall not be sentenced to imprisonment for an offence under this section unless in the opinion of the court dealing with the case, the offence was committed wilfully.

3. Consideration of report and accounts of directors.

—Where these have been printed and circulated prior to the meeting they are often, by consent or custom, taken as read.

The chairman usually proceeds to make some comments on the accounts, explains the position of the company, gives such further information concerning its affairs as he thinks may properly be made known, and concludes by moving that the report and accounts be adopted. This is usually seconded by another director with a few remarks, and then the meeting is free and open to comment upon or criticise the report, the accounts, and the chairman's speech.

By formally moving "That the report and accounts be received and adopted," it follows that amendments thereto may also be moved. Care should be taken that such amendments are strictly in order (see *post*, p. 218, as to limitations) ; *c.g.*—

(1) **That the report and accounts be received and adopted save as regards certain matters specified therein, or subject to some instruction to the directors** would be in order, since it is within the power of the meeting to consider and entertain such an amendment. "Directors have great powers, and the Court refuses to interfere with their management of the company's affairs if they keep within their powers, and if a shareholder complains of the conduct of the directors while they keep within their powers, the Court says to him, 'If you want to alter the management of the affairs of the company go to a general meeting, and if they agree with you they will pass a resolution obliging the directors to alter their course of proceeding'" (*Isle of Wight Railway Co. v. Tahourdin*, 1884, 25 Ch. D., p. 330).

In this case a meeting convened to remove "any" of its directors was held to be able to remove "all." This, of course, is only applicable in the case of companies governed by the Companies Clauses Acts, 1845-1889.

(2) **That the question be now put** (*i.e.* the closure or the "gag" by those opposed to it).—If carried in the negative it may prevent the original resolution being put at all, for which purpose the meeting is expressly called. Such an amendment would be out of order if its object is to burke discussion (*ante*, p. 187), unless it were moved not to prevent the original resolution being considered, but to take the sense of the meeting as to the adoption or rejection of the report and accounts, after a reasonable time for discussion had been allowed. A member has no right to continue to speak if a meeting desires him to stop, provided he has had a reasonable opportunity of speaking (*Wall v. London & Northern Assets Corporation*, 1898, 2 Ch. 469).

(3) **Dilatory or obstructive resolutions are distinctly out of order.**—Meetings are convened for the express purpose of transacting certain specified business, and any amendment which has for its object the frustration of that purpose is usually out of order : *e.g.*—

(a) *That this meeting* (or debate) *be adjourned*, unless moved in order to facilitate business, *e.g.* to take a poll.

(b) *That this meeting do proceed to the next business.*

Both these resolutions prevent the consideration of the report and accounts with the view to either adopting or rejecting them.

(4) **Amendments out of order.**—The two following amendments sometimes moved are also out of order, and should not be put to the meeting :—

(a) *That the report and accounts be received but not adopted*—*i.e.* a mere negative of the original resolution. The same object could be obtained by voting against the resolution.

(b) *That a committee of inspection be appointed.*

The latter requires the sanction of a special resolution, since it cannot come under the category of ordinary business. "A company may, by special resolution, appoint inspectors to investigate its affairs" (Section 137 of the Act). It is, however, very usual to move to appoint a committee of shareholders to consult with the directors on some matter mentioned in the report, and to report subsequently to another meeting of shareholders; but, as pointed out below, such committees have no special power to inspect the books or examine witnesses.

A meeting called to consider an increase of capital could not admit amendments which give the directors power to borrow money, but a meeting convened for the purpose, *inter alia*, of appointing X as liquidator may substitute Y without special notice (*Bethell v. Trench Tubeless Tyre Co.*, 1900, 1 Ch. 408).

4. Discussion of the report and accounts : asking questions thereon.—So far as it can be done without injury to the interests of the company, the directors should answer freely all inquiries as regards the accounts and the company's affairs. But they are not bound to answer in general meeting any questions that they consider it undesirable in the best interests of the company to answer.

5. Committees of inspection.—Where there is considerable dissatisfaction with the state of the affairs of the company, the shareholders may decline to adopt the accounts, and may appoint a committee of shareholders to investigate and report to an adjourned meeting. But apparently even such a committee of inspection, *i.e.* not under Section 137, cannot be appointed without proper notice, *i.e.* a special resolution is obligatory (*post*), for it is a matter of importance to shareholders, and all of them should have an opportunity of voting. When there is nothing to conceal, the directors usually offer no opposition to such a course, and give every facility for investigation. Unless the articles expressly provide, such a committee appointed by an ordinary general meeting without special notice has no power to inspect the books of the company, examine witnesses, or to make any

changes in the management, unless the committee is appointed under Section 137.

6. Should the directors oppose the appointment of a committee of inspection, Section 137 of the Act may be put into effect, which provides :—

(1) A company may by *special resolution* appoint inspectors to investigate its affairs.

(2) Inspectors so appointed shall have the same powers and duties as inspectors appointed by the Board of Trade, except that, instead of reporting to the Board, they shall report in such manner and to such persons as the company in general meeting may direct.

(3) If any officer or agent of the company refuses to produce to the inspectors any book or document which it is his duty under this section so to produce, or refuses to answer any question which is put to him by the inspectors with respect to the affairs of the company, he shall be liable to be proceeded against in the same manner as if the inspectors had been inspectors appointed by the Board of Trade.

But of course the company cannot take the control of its affairs out of the hands of its directors and give powers to a committee unless the articles so provide, and if there be no power to remove the directors the articles must be altered or the company must wait until the directors retire in due course. The latter is often the more practical method, since alteration of articles requires a special resolution which, *inter alia*, requires a three-fourths majority in its support, whereas the election of a director requires only a bare majority.

7. Application to Board of Trade to appoint inspectors under Section 135 may be made by the dissatisfied shareholders if the special resolution be not carried.

135. (1) The Board of Trade may appoint one or more competent inspectors to investigate the affairs of any company and to report thereon in such manner as the Board direct—

- (i) In the case of a banking company having a share capital, on the application of members holding not less than one-third of the shares issued ;
- (ii) In the case of any other company having a share capital, on the application of members holding not less than one-tenth of the shares issued ;

(iii) In the case of a company not having a share capital, on the application of not less than one-fifth in number of the persons on the company's register of members.

(2) The application shall be supported by such evidence as the Board of Trade may require for the purpose of showing that the applicants have good reason for, and are not actuated by malicious motives in requiring, the investigation ; and the Board may, before appointing an inspector, require the applicants to give security to an amount not exceeding one hundred pounds for payment of the costs of the inquiry.

(3) It shall be the duty of all officers and agents of the company to produce to the inspectors all books and documents in their custody or power.

(4) An inspector may examine on oath the officers and agents of the company in relation to its business, and may administer an oath accordingly.

(5) If any officer or agent of the company refuses to produce to the inspectors any book or document which it is his duty under this section so to produce, or refuses to answer any question which is put to him by the inspectors with respect to the affairs of the company, the inspectors may certify the refusal under their hand to the court, and the court may thereupon inquire into the case, and after hearing any witnesses who may be produced against or on behalf of the alleged offender and after hearing any statement which may be offered in defence, punish the offender in like manner as if he had been guilty of contempt of the court.

(6) On the conclusion of the investigation the inspectors shall report their opinion to the Board of Trade, and a copy of the report shall be forwarded by the Board to the registered office of the company, and a further copy shall, at the request of the applicants for the investigation, be delivered to them.

The report shall be written or printed, as the Board direct.

Section 136 of the Act provides :—

(1) If from any report it appears to the Board of Trade that any person has been guilty of any offence in relation to the company for which he is criminally liable, the Board shall proceed as follows :—

(a) In the case of an offence in England, if it appears to the Board that the case is one in which the prosecution ought to be undertaken by the Director of Public Prosecutions, the Board shall refer the matter to him ;

(b) In the case of an offence in Scotland the Board shall refer the matter to the Lord Advocate.

(2) If where any matter is referred to the Director of Public Prosecutions under this section he considers that the case is one in which a prosecution ought to be instituted and, further, that it is

desirable in the public interest that the proceedings in the prosecution should be conducted by him, he shall institute proceedings accordingly, and it shall be the duty of all officers and agents of the company, past and present (other than the defendant in the proceedings), to give to him all assistance in connection with the prosecution which they are reasonably able to give.

For the purposes of this sub-section the expression "agents" in relation to a company shall be deemed to include the bankers and solicitors of the company and any persons employed by the company as auditors, whether those persons are or are not officers of the company.

(3) The expenses of and incidental to an investigation under the last preceding section of this Act (in this sub-section referred to as "the expenses") shall be defrayed as follows :—

- (a) Where as a result of the investigation a prosecution is instituted by the Director of Public Prosecutions, or by or on behalf of the Lord Advocate, the expenses shall be defrayed by the Board of Trade.
- (b) In any other case the expenses shall be defrayed by the company unless the Board of Trade think proper to direct, as the Board are hereby authorised to do, that they shall either be paid by the applicants or in part by the company and in part by the applicants :

Provided that—

- (i) if the company fails to pay the whole or any part of the sum which it is liable to pay under this sub-section, the applicants shall make good the deficiency up to the amount by which the security given by them under the last preceding section exceeds the amount (if any) which they have under this sub-section been directed by the Board to pay ; and
- (ii) any balance of the expenses not defrayed either by the company or the applicants shall be defrayed by the Board.

(4) Sub-section (3) of Section 13 of the Economy (Miscellaneous Provisions) Act, 1926 (which provides for the issue out of the Bankruptcy and Companies Winding-up (Fees) Account of sums towards meeting the charges estimated by the Board of Trade in respect of salaries and expenses under this Act in relation to the winding up of companies in England) shall have effect as if expenses to be defrayed by the Board under this section were expenses incurred by the Board under this Act in relation to the winding up of companies in England.

Section 114 of the Act provides that shareholders holding one-tenth of the paid-up capital can at any time convene

an extraordinary general meeting for this or any other purpose (see *ante*, p. 164).

Rights of minority of shareholders to investigation.—Since the Act of 1890, now incorporated in the Act of 1929, it is “not so clear that the majority could compel the minority of shareholders to forego the statutory right of investigation” (*re* General Phosphate Corporation, 1893, W. N. 142).

8. Declaring a dividend.—One of the directors usually then moves the payment of a dividend out of the available profits. After a dividend has been declared and becomes payable it is a specialty debt, and each shareholder is entitled to sue the company for his proportion for twenty years from the date of declaration (*re* Artizans’ Land and Mortgage Corporation, 1904, 1 Ch. 796). “The necessity for the declaration of a dividend as a condition precedent to an action to recover is stated in general terms in *Lindley on Companies* [6th edition, p. 454], and, where the reserve fund article applies, it is obvious that such a declaration is essential, for the shareholder has no right to any payment until the corporate body has determined that the money can properly be paid away” (*Bond v. Barrow Hæmatite Steel Co.*, 1902, 1 Ch., p. 362), and the Court will not readily override the directors’ discretion as to a declaration or recommendation therefor. The articles usually provide that the directors, with the sanction of the meeting, may declare a dividend. Table A, Clause 89, provides: “The company in general meeting may declare dividends, but no dividend shall exceed the amount recommended by the directors.” There is generally a similar provision in the articles that shareholders may reduce but not increase the rate of dividend recommended by the directors.

9. Election of directors and other officers.—The articles commonly provide for the rotation of directors, and for notice to be given of any intention to propose a new director, which provisions must be carefully followed. See Table A, Clauses 73 to 80 (*post*, p. 344), as to election and re-election of directors.

10. Appointment and remuneration of auditors.—

Section 132 of the Act provides :—

(1) Every company shall at each annual general meeting appoint an auditor or auditors to hold office until the next annual general meeting.

(2) If an appointment of auditors is not made at an annual general meeting, the Board of Trade may, on the application of any member of the company, appoint an auditor of the company for the current year.

(3) A person, other than a retiring auditor, shall not be capable of being appointed auditor at an annual general meeting unless notice of an intention to nominate that person to the office of auditor has been given by a member to the company not less than fourteen days before the annual general meeting, and the company shall send a copy of any such notice to the retiring auditor, and shall give notice thereof to the members, either by advertisement, or in any other mode allowed by the articles, not less than seven days before the annual general meeting : Provided that if, after notice of the intention to nominate an auditor has been so given, an annual general meeting is called for a date fourteen days or less after the notice has been given, the notice, though not given within the time required by this sub-section, shall be deemed to have been properly given for the purposes thereof, and the notice to be sent or given by the company, may instead of being sent or given within the time required by this sub-section, be sent or given at the same time as the notice of the annual general meeting.

(4) Subject as hereinafter provided, the first auditors of the company may be appointed by the directors at any time before the first annual general meeting, and auditors so appointed shall hold office until that meeting :

Provided that—

(a) The company may at a general meeting of which notice has been served on the auditors in the same manner as on members of the company remove any such auditors and appoint in their place any other persons being persons who have been nominated for appointment by any member of the company and of whose nomination notice has been given to the members of the company not less than seven days before the date of the meeting ; and

(b) If the directors fail to exercise their powers under this sub-section, the company in general meeting may appoint the first auditors, and thereupon the said powers of the directors shall cease.

(5) The directors may fill any casual vacancy in the office of auditor, but while any such vacancy continues the surviving or continuing auditor or auditors, if any, may act.

(6) The remuneration of the auditors of a company shall be fixed by the company in general meeting, except that the remuneration of an auditor appointed before the first annual general meeting, or of an auditor appointed to fill a casual vacancy, may be fixed by the directors, and that the remuneration of an auditor appointed by the Board of Trade may be fixed by the Board.

Section 133 of the Act provides :—

(1) None of the following persons shall be qualified for appointment as auditor of a company :—

- (a) A director or officer of the company ;
- (b) Except where the company is a private company, a person who is a partner of or in the employment of an officer of the company ;
- (c) A body corporate.

(2) Nothing in this section shall disqualify a body corporate from acting as auditor of a company if acting under an appointment made before the third day of August, nineteen hundred and twenty-eight, but subject as aforesaid any body corporate which acts as auditor of a company shall be liable to a fine not exceeding one hundred pounds.

(3) In the application of this section to Scotland the expression “ body corporate ” does not include a firm.

The chief points to be noted are—

1. Election or re-election of auditors should be left entirely to the shareholders, and it is inadvisable for the directors to take a prominent part in it. Where the company does not appoint, the Board of Trade will appoint on the application of a member.
2. Remuneration must be fixed by the company in general meeting, where the company appoints the auditors.
3. A director or officer of the company is not capable of being appointed auditor of the company (Section 133 (1)).
4. Fourteen days' notice of an intention to nominate an auditor, other than the retiring auditor, must be given to the company, and seven days' notice to shareholders before the general meeting thereof.

5. Auditors of a company are entitled to attend all general meetings (Section 134 (3)).

11. Special business can of course be transacted at an ordinary meeting, provided due notice thereof has been given. There is no need, as was usual at one time, to transact special business at an extraordinary general meeting. A special resolution is required only if the Act or the articles so prescribe.

12. Limitation of control of management by company in general meeting.—Where articles provided that the business of a company was to be managed by the directors, who might exercise all the powers of the company “subject to such regulations (being not inconsistent with the provisions of the articles) as may be prescribed by the company in general meeting,” it was held that when an article provided that no acquisition or letting of premises should be valid in the event of a managing director dissenting therefrom, and the company in general meeting, notwithstanding the dissent of a managing director, passed at an extraordinary general meeting resolutions by a simple majority of shareholders to acquire and let premises, that such resolutions were inconsistent with the articles and that the company must be restrained from action thereon (*Quin and Axtens v. Salmon*, 1909, A. C. 442).

It is the right and duty of directors to advise the members of a company as to the prudence of proposed changes in the scope of the company's operations, and it is within their powers to circulate statements and arguments in favour of such changes at the expense of the company. There is, however, no obligation, legal or moral, to do the like on behalf of the dissentient members (*Campbell v. Australian Mutual Provident Society*, 1909, 24 T. L. R. 623).

CHAPTER XIX

MEETINGS OF SHAREHOLDERS

RESOLUTIONS, MOTIONS, AND AMENDMENTS THERE TO

ARTICLES usually provide that all business *except* ordinary business, *e.g.* sanctioning a dividend, consideration of accounts, reports of directors and auditors, election of directors, election of auditors and the fixing of their remuneration, shall be deemed special business and will require special notice. But general notice of the nature of ordinary business need not be given, neither need notice be given of resolutions relating to such ordinary business if the articles do not so require and they are strictly relevant and within the scope of the notice of the meeting. But notice must be given of resolutions to be proposed at a statutory meeting (Section 113, Sub-section (7)), and also in regard to the election of auditors other than the retiring auditors (Section 132, Sub-section (3)). Probably notice need not be given in regard to the election of directors other than the retiring directors, unless the articles require such a notice (see *Catesby v. Burnett*, 1916, 2 Ch. 325). Formal motions, *e.g.* previous question, do not require notice.

There are four kinds of resolutions which may be dealt with by a general meeting. It is desirable that "omnibus" resolutions should be avoided, and that each resolution should deal with one subject only.

1. Ordinary resolutions may be defined as those which may be passed by a bare majority of those voting at any kind of general meeting at which either notice of the intention to deal with the subject-matter of the resolution has been duly given or where the subject-matter of the resolution does not require notice by the articles, *e.g.* appointment of auditors, or declaration of dividends.

Except in regard to ordinary business as defined by the articles and unless the articles provide to the contrary,

notice of all matters to be dealt with at a general meeting must be given. Notice must be given to the shareholders of the general nature of any special business which may be dealt with by ordinary resolution. Any irregularity in an ordinary resolution may be cured by a subsequent ratification by the company.

It is not necessary, though desirable, to set out in the notice the exact terms of an ordinary resolution, but it is essential in regard to an extraordinary or special resolution (Section 117).

Section 50 provides :—

(1) A company limited by shares or a company limited by guarantee and having a share capital, if so authorised by its articles, may alter the conditions of its memorandum as follows : that is to say, it may—

- (a) increase its share capital by new shares of such amount as it thinks expedient ;
- (b) consolidate and divide all or any of its share capital into shares of larger amount than its existing shares ;
- (c) convert all or any of its paid-up shares into stock, and reconvert that stock into paid-up shares of any denomination ;
- (d) subdivide its shares, or any of them, into shares of smaller amount than is fixed by the memorandum, so, however, that in the subdivision the proportion between the amount paid and the amount, if any, unpaid on each reduced share shall be the same as it was in the case of the share from which the reduced share is derived ;
- (e) cancel shares which, at the date of the passing of the resolution in that behalf, have not been taken or agreed to be taken by any person, and diminish the amount of its share capital by the amount of the shares so cancelled.

(2) The powers conferred by this section must be exercised by the company in general meeting.

(3) A cancellation of shares in pursuance of this section shall not be deemed to be a reduction of share capital within the meaning of this Act.

2. Extraordinary resolutions.—

Section 117 of the Act provides :—

(1) A resolution shall be an extraordinary resolution when it has been passed by a majority of not less than three-fourths

of such members as, being entitled so to do, vote in person or, where proxies are allowed, by proxy at a general meeting of which notice specifying the intention to propose the resolution as an extraordinary resolution has been duly given.

The word "majority" has two meanings:—

- (a) The greater number or part; a number which is more than half the whole number, *e.g.*—

For the motion	-	-	75 majority.
Against the motion	-	-	25 minority.
			—
			50 difference.

- (b) The number by which, in voting, the votes cast on one side exceed those cast on the other, *e.g.*—

For the motion	-	-	75
Against the motion	-	-	25
			—
			50 majority.
			—

"A majority of not less than three-fourths of such members as, being entitled so to do, vote" therefore means three-fourths or more of those who vote.

Where articles provide a larger majority than is required by statute, the latter majority prevails (*Ayre v. Skelsey's Adamant Cement Co.*, 1904, 20 T. L. R. 587).

The notice must set out the actual resolution, and also that it is proposed to pass the resolution as an extraordinary resolution (*MacConnell v. Prill & Co.*, 1916, 2 Ch. 57). In *Anglo-American Oil Co. v. Martin* (1914, C. A. (unreported)), a notice was held bad since it omitted to state that the resolution was to be proposed as an extraordinary resolution. Such a notice may be waived provided all the shareholders are present at the meeting and assent to the waiver of the statutory requirement (*re Oxted Motor Co.*, *ante*, p. 108).

- (3) At any meeting at which an extraordinary resolution or a special resolution is submitted to be passed a declaration of the chairman that the resolution is carried shall, unless a poll is

demand, be conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution.

(4) At any meeting at which an extraordinary resolution or a special resolution is submitted to be passed a poll shall be taken to be effectively demanded, if demanded—

(a) by such number of members for the time being entitled under the articles to vote at the meeting as may be specified in the articles, so, however, that it shall not in any case be necessary for more than five members to make the demand ;
or

(b) if no provision is made by the articles with respect to the right to demand the poll, by three members so entitled or by one member or two members so entitled, if that member holds or those two members together hold not less than fifteen per cent. of the paid-up share capital of the company.

(5) When a poll is demanded in accordance with this section, in computing the majority on the poll reference shall be had to the number of votes to which each member is entitled by virtue of this Act or of the articles of the company.

(6) For the purposes of this section notice of a meeting shall be deemed to be duly given and the meeting to be duly held when the notice is given and the meeting held in manner provided by this Act or the articles.

A doubt was raised in *Carruth v. Imperial Chemical Industries* (1937, A. C., at p. 759) whether the chairman can demand a poll under this section.

Extraordinary resolutions therefore require—

- (1) Notice of meeting as provided by the articles. If seven days' notice is to be given, that means seven days' *clear* notice, *i.e.* exclusive of day of notice and day of meeting.
- (2) Three-fourths majority. Upon a show of hands only hands are counted, not proxies (*Ernest v. Loma Gold Mines*, 1897, 1 Ch. 1); but on a poll the majority must be calculated with reference to the number of votes to which each member voting is entitled by the articles.
- (3) Notice must specify that the meeting is convened with the intention of passing the resolution as an extraordinary resolution, and a notice of an

intended special resolution is not sufficient notice upon which to propose an extraordinary resolution (see in *re* Bridport Old Brewery Co., 1867, L. R., 2 Ch. 191).

- (4) *Amendment of extraordinary resolution.*—Any resolution passed at a meeting materially differing from the resolution of which notice has been given is invalid (*re* Teede & Bishop, 1901, 70 L. J., Ch. 409) and apparently no amendment of the extraordinary resolution as stated in the notice can be accepted, since Section 117, Sub-section (1), provides that the notice should specify the intention of passing *the* resolution as an extraordinary resolution (*MacConnell v. Prill & Co.*, *ante*, p. 210).
- (5) A printed copy must be forwarded to the registrar of companies within fifteen days from its passing, and he shall record the same (Section 118, see *post*, p. 213).
- (6) As to declaration of chairman, voting, and poll, see Section 117, Sub-sections (3), (4), (5).

The articles usually specify that certain kinds of business must be transacted by extraordinary resolution, and in addition the Act of 1929 requires or permits the passing of extraordinary resolutions in connection with the following :—

- (a) Winding up an insolvent company voluntarily (Section 225 (1), (c)). See Chapter XXIII, *post*, p. 254.
- (b) Sanctioning an arrangement between a company and its creditors in a voluntary winding up (Section 251), see Chapter XXIII, *post*, p. 254 ; or compromises with creditors, debtors, or contributories (Sections 248 and 191 (1) (d), (e), (f)).

Notice of a meeting to increase the share capital is not sufficient if it merely refers generally to a proposed extraordinary resolution to increase the capital ; it must show an intention to make the specific increase embodied in the resolution that is actually passed (*MacConnell v. Prill & Co.*, *ante*, p. 210).

3. Special resolution—

117. (2) A resolution shall be a special resolution when it has been passed by such a majority as is required for the passing of an extraordinary resolution and at a general meeting of which not less than twenty-one days' notice, specifying the intention to propose the resolution as a special resolution, has been duly given :

Provided that, if all the members entitled to attend and vote at any such meeting so agree, a resolution may be proposed and passed as a special resolution at a meeting of which less than twenty-one days' notice has been given.

As to "clear day's notice" see *ante*, p. 17.

Apparently there is no limitation to the shortness of the notice provided all the members attend and agree to the notice in fact given.

Amendment of special resolutions.—Apparently special resolutions may not be amended, since s. 117 (2), like s. 117 (1) in regard to extraordinary resolutions, provides that the notice should specify the intention to propose *the* resolution as a special resolution (*MacConnell v. Prill & Co.*, *ante*, p. 210).

Registration and copies of resolutions and agreements—

118. (1) A printed copy of every resolution or agreement to which this section applies shall, within fifteen days after the date of the passing or making thereof, be forwarded to the registrar of companies and recorded by him.

(2) Where articles have been registered, a copy of every such resolution or agreement for the time being in force shall be embodied in or annexed to every copy of the articles issued after the passing of the resolution or the making of the agreement.

(3) Where articles have not been registered, a printed copy of every such resolution or agreement shall be forwarded to any member at his request, on payment of one shilling or such less sum as the company may direct.

(4) This section shall apply to—

- (a) Special resolutions ;
- (b) Extraordinary resolutions ;
- (c) Resolutions which have been agreed to by all the members of a company, but which, if not so agreed to, would not have been effective for their purpose unless, as the case may be, they had been passed as special resolutions or as extraordinary resolutions ;
- (d) Resolutions or agreements which have been agreed to by all the members of some class of shareholders, but which,

if not so agreed to, would not have been effective for their purpose unless they had been passed by some particular majority or otherwise in some particular manner, and all resolutions or agreements which effectively bind all the members of any class of shareholders though not agreed to by all those members.

- (e) Resolutions requiring a company to be wound up voluntarily, passed under paragraph (a) of sub-section (1) of section two hundred and twenty-five of this Act.

(5) If a company fails to comply with sub-section (1) of this section, the company and every officer of the company who is in default shall be liable to a default fine of two pounds.

(6) If a company fails to comply with sub-section (2) or sub-section (3) of this section, the company and every officer of the company who is in default shall be liable to a fine not exceeding one pound for each copy in respect of which default is made.

(7) For the purposes of the last two foregoing sub-sections, a liquidator of the company shall be deemed to be an officer of the company.

The following acts, *inter alia*, may be done by special resolution :—

- i. Alteration of articles (Section 10 of the Act).

If the thing proposed to be done is forbidden by the articles or they are silent on the matter, but the company has power to do it when the articles provide, then if there is no special provision as to the manner in which the thing can be done, *e.g.* to increase the capital, a special resolution will alone be necessary ; but where the step contemplated can only be done if there is power in the articles together with the passing of a special resolution, then it will be necessary first to alter the articles and next to pass a special resolution.

Section 22 of the Act provides :—

Notwithstanding anything in the memorandum or articles of a company, no member of the company shall be bound by an alteration made in the memorandum or articles after the date on which he became a member, if and so far as the alteration requires him to take or subscribe for more shares than the number held by him at the date on which the alteration is made, or in any way increases his liability as at that date to contribute to the share capital of, or otherwise to pay money to, the company :

Provided that this section shall not apply in any case where the member agrees in writing, either before or after the alteration is made, to be bound thereby.

ii. Change of name, with sanction of Board of Trade (Section 19, Sub-Section (1)).

iii. Alteration of objects of company, with sanction of the Court. Section 5 of the Act provides that—

(1) Subject to the provisions of this section, a company may, by special resolution, alter the provisions of its memorandum with respect to the objects of the company, so far as may be required to enable it—

- (a) To carry on its business more economically or more efficiently ; or
- (b) To attain its main purpose by new or improved means ; or
- (c) To enlarge or change the local area of its operations ; or
- (d) To carry on some business which under existing circumstances may conveniently or advantageously be combined with the business of the company ; or
- (e) To restrict or abandon any of the objects specified in the memorandum ; or
- (f) To sell or dispose of the whole or any part of the undertaking of the company ; or
- (g) To amalgamate with any other company or body of persons.

(2) The alteration shall not take effect until, and except in so far as, it is confirmed on petition by the court.

A company carrying on insurance business other than life insurance presented a petition to take power to carry on life insurance business. The name of the company did not indicate that it carried on life insurance business. The Court of Session held that the company must change its name so as to include reference to life insurance business (*re Mutual Property Insurance Co.*, 1934, S. L. T. 15).

Alterations in the objects, when limited so as to give power to carry on only those trades which are already being carried on by a company, should be sanctioned (*re Bolsom Bros.*, 1935, 1 Ch. 413).

iv. Reduce or cancel any paid-up share capital which is lost or unrepresented by available assets with the sanction of the Court (Section 55).

v. Winding up voluntarily (Section 225) or by the Court (Section 168). See Chapter XXIII, *post*, p. 254.

vi. Create reserve liability of limited company. Section 49 of the Act provides :—

A limited company may by special resolution determine that any portion of its share capital which has not been already called up shall not be capable of being called up, except in the event and for the purposes of the company being wound up, and thereupon that portion of its share capital shall not be capable of being called up except in the event and for the purposes aforesaid.

vii. Sale and transfer of assets to another company (Section 234).

viii. Appointment of inspectors to examine into the affairs of a company (Section 137).

PROCEEDINGS BY SPECIAL RESOLUTION

The Act only requires one meeting (see *ante*, p. 213) of which not less than twenty-one days' notice specifying the intention to propose the resolution as a special resolution has been duly given. If *all* the members entitled to attend and vote at any such meeting agree, they may pass a special resolution of which less than twenty-one days' notice has been given.

i. *Computation of Time*.—"The general rule of law in the computation of time is that fractions of a day are not reckoned. . . . 'An interval of time not less than fourteen days' is equivalent to saying that fourteen days must intervene or elapse between the two dates" (*re* Railway Sleepers Supply Co., 1885, 29 Ch. D., pp. 205 and 207). If the statutory interval is too short or too long, the resolution carried at the meeting is invalid (see *Malleson v. National Insurance Corp.*, 1894, 1 Ch., at p. 206).

ii. Meetings must be duly convened in accordance with the articles, or, if none exist, with Table A.

iii. Meetings must be duly constituted—*i.e.* there must be a duly appointed chairman and quorum.

iv. *Demand for Poll*.—As to the demand for a poll, see Section 117 (4), *ante*, p. 211.

The declaration of the chairman of a meeting called to pass a resolution under Section 117 (3) is not conclusive where there is no quorum, or if the declaration shows on the face of it that the statutory majority has not voted in favour of the resolution (*re Caratal (New) Mines*, 1902, 2 Ch. 498, and *re John T. Clark & Co.*, 1911, 48 Sc. L. R. 154). A special resolution was declared by the chairman to have been carried by the requisite majority. Among the majority voting for the resolution were two shareholders who in terms of the articles were not qualified to vote. If their votes had not been included, the requisite majority would not have been obtained. No poll was demanded at the meeting. It was held that as no poll had been demanded at the meeting the declaration of the chairman that the resolution had been carried by the requisite majority was final and conclusive (*re Graham's Morocco Co.*, 1932, S. C. 269). Apart from fraud, the declaration of the chairman of a meeting that a special resolution has been passed is conclusive, and not *primâ facie*, and the Court will not entertain the question whether the resolution was carried by the requisite majority (*re Hadleigh Castle Gold Mines*, 1900, 2 Ch. 419).

A resolution at an extraordinary meeting of a company called for the purpose of considering the removal of directors, was declared by the chairman to have been carried unanimously, and no one challenged this ruling. It was held that an action could not be brought to restrain the new directors from acting on the resolution on the ground that it was not in fact carried by a three-fourths majority (*Oppert v. Brownhill Great Southern*, 1898, 14 T. L. R. 249).

At a poll the number of votes which each voter is by the articles entitled to is to be taken into account, and votes by proxy are (if the articles so provide, but not otherwise) allowed. The proxy votes for his principal.

A printed copy of every resolution must be forwarded to the Registrar of Companies within fifteen days of its passing, and he is to record the same.

Apparently the Registrar will accept a resolution for filing after the expiration of the fifteen days allowed. He is not concerned whether the resolution is *ultra vires* the

company, but if it is bad on the face of it he will refuse to register.

4. Resolutions requiring a specified majority, sometimes called "class resolutions."—The articles sometimes require that something which may be done shall require a majority of a special character: *e.g.* whether of the whole number of members or of a certain proportion of the issued capital or classes of capital, or merely of the members present at a meeting.

RESOLUTIONS PASSED AT ADJOURNED MEETINGS

Section 119 of the Act provides :—

Where after the commencement of this Act a resolution is passed at an adjourned meeting of—

- (a) a company ;
- (b) the holders of any class of shares in a company ;
- (c) the directors of a company ;

the resolution shall for all purposes be treated as having been passed on the date on which it was in fact passed, and shall not be deemed to have been passed on any earlier date.

RESOLUTIONS (OR MOTIONS) AND AMENDMENTS THERETO

A *motion* is a proposal put before a meeting, and when adopted by the meeting becomes a *resolution*. The word *resolution* is generally used for *motion* in reference to company meetings.

Motions and amendments thereto—

- (1) Must be within the scope of the notice convening the meeting, and within the powers of that meeting which purports to deal with them ;
- (2) Must not raise again a question that has already been decided by the meeting ;
- (3) Should be affirmative in form—not merely negative of something already proposed—and be in such a form that a definite decision can be arrived at ;
- (4) Must be dealt with in accordance with the articles : *e.g.* as to notice and being in writing. This only

refers to motions and amendments of some importance, and excludes motions relating to points of order or conduct of the meeting which are brought forward and dealt with there and then.

Motions and amendments thereto need not be in writing unless articles expressly provide, but they should be sufficiently definite (*Henderson v. Bank of Australasia*, ante, p. 176).

- (5) Amendments to resolutions may be moved without notice unless articles otherwise provide, but they must be relevant and not outside the scope of the notice of the resolution. In *Betts & Co. v. Macnaghten* (1910, 1 Ch. 430) a notice that a certain resolution would be passed "with such amendments as shall be determined on at the meeting" was held to be valid.

Motions and amendments must be put to the meeting, and need not necessarily be seconded unless the articles specially require this.—"If the chairman put the question without its being either proposed or seconded by anybody, that would be perfectly good" (re *Horbury Bridge Coal Co.*, 1879, 11 Ch. D., p. 118). A chairman is not justified in refusing a motion or amendment because there is no seconder unless the articles or rules expressly provide that all motions or amendments shall be seconded.

If the mover of the amendment does not challenge the chairman's ruling, that is not a waiver of his right to impeach the resolution. "As the chairman's refusal to put the amendment had withdrawn a material and relevant question from the consideration of the meeting, the resolution must be set aside. . . . When a chairman deliberately rules that a certain amendment cannot be put, it would be improper and indecent for any shareholder to proceed to discuss the propriety of the chairman's ruling; of course, I am assuming that he gives his ruling deliberately, and having the matter sufficiently before him" (*Henderson v. Bank of Australasia*, 1890, 45 Ch. D., pp. 331 and 350).

An amendment (which should, but need not, be in writing) unless articles require must—

- (1) Be moved after the original question has been proposed from the chair and before that question has been put to the vote ;
- (2) Relate solely to the motion which it professes to amend, and not be in effect a new proposition on a different subject ;
- (3) Not be dilatory, nor obstructive ; be relevant to the motion which it purports to amend ; not outside the purposes of the meeting ; not inconsistent with anything already agreed upon ;
- (4) Be within the notice convening the meeting, or within the scope of the business which may be transacted at such meeting, and not impose a greater burden on the company than the original motion (*re* Teede & Bishop, 1901, 70 L. J., Ch. 409 ; *Clinch v. Financial Corporation*, *ante*, p. 133) ;
- (5) Be incidental to the business specified in the notice, *e.g.* a winding-up resolution might be amended to appoint a liquidator (*re* Indian Zoedone Co., 1884, 26 Ch. D. 70) ;
- (6) If carried, be put as a substantive motion. If such substantive motion be lost, the original proposition is not thereby revived, except when the amendment is practically a different motion and incompatible with the original motion.

In order to get rid of a motion and the amendment thereto, the latter (not being practically a different motion) is sometimes carried, and lost as a substantive motion.

Where there are more amendments than one they should be put to the meeting in the order in which they affect the main question and then the main question in its original form or as finally amended. Strict adherence to the formality of putting motions and amendments is not essential, provided they are put to the meeting in such a way that those present understand what it is that they are called upon to decide (*ex parte* Stevens, *ante*, p. 59).

When at a meeting every opportunity for full discussion and for the moving of any amendment has been afforded and an adjournment has been made for the purpose of more

conveniently taking a poll, members have no right at an adjournment to reopen the discussion by moving other amendments or resolutions.

Resolutions and amendments thereto.—To be valid these must comply with the following requirements :—

- (1) Be *intra vires* (i.e. within the powers of) the company ;
- (2) Not violate any statute or principle of law ;
- (3) Not contrary to public policy ;
- (4) Not contrary to the Act or the articles of the company.

Business at adjourned meetings.—Usually only such business can be transacted at the adjourned meeting as has been left unfinished at the original meeting, and proxies are, in the absence of express provision, invalid for the adjourned meeting unless valid for the original meeting (see *post*, p. 238). In *Catesby v. Burnett*, 1916, 2 Ch. 325, the articles provided that a member should not be qualified to be elected a director unless fourteen clear days' notice of the intention in that behalf were given to the company before the *day of election*. At the date of ordinary general meeting there were two directors due for retirement, but the meeting was adjourned without any election of directors. Notice had been given fourteen clear days before the adjourned meeting, and the two new directors elected thereat were held to be validly appointed, i.e. date of adjourned meeting was the day of election. If the articles had provided for fourteen days' notice before the annual general *meeting* obviously the election could not have been sustained.

CHAPTER XX

MEETINGS OF SHAREHOLDERS

VOTING

AT Common Law, votes at all meetings are taken by show of hands, and when there is a mode of voting known to the community that mode must be followed unless a binding rule to the contrary is shown (in *re Horbury Bridge Coal Co.*, 1879, 11 Ch. D., 109, 113, and 115).

The manner and method of voting are usually determined by the articles. Section 115 (1) of the Act provides that in so far as the articles do not make other provision—

- (f) in the case of a company originally having a share capital every member shall have one vote in respect of each share or each ten pounds of stock held by him, and in any other case every member shall have one vote.

This applies if there are no articles or if articles are silent on the matter. Usually articles provide one vote for each share held by a member, though frequently certain classes of shares, *e.g.* preference shareholders, have no vote or are allowed to vote only on certain specified matters. In the absence of contract a person in whose name shares are registered (*e.g.* a mortgagee) can vote as he pleases (*Siemens Bros. v. Burns*, 1918, 2 Ch. 324). The right of an alien enemy of voting either personally or by proxy in respect of shares in an English company is suspended during war (*Robson v. Premier Oil &c. Co.*, 1915, 2 Ch. 124, and see *R. v. L.C.C.*, 1915, 2 K. B., p. 478).

In *re Stranton Iron Co.* (1873, L. R., 16 Eq. 559) it was held that directors cannot decline a registration of transfers on the ground that it involves a distribution of shares in order to secure full voting powers on behalf of certain members. But where the mortgagee of shares agrees for a valuable consideration to vote at general meetings of the company in accordance with the wishes of the mortgagor, the Court will enforce the agreement by injunction (*Puddephatt v. Leith*, No. 1, 1916, 1 Ch. 200).

An agreement made by a shareholder on a sale of shares held by him, whether personally or in a representative capacity, that he will vote in a particular way, is valid and can be enforced (*Greenwell v. Porter*, 1902, 1 Ch. 530). As to the obligations of a nominee, to whom a member has transferred his shares in order to gain greater voting power, to vote in accordance with instructions, see *Kirby v. Wilkins* (1929, 2 Ch., p. 454) and *Moffatt v. Farquhar* (1878, 7 Ch. D., 591).

A shareholder's vote is a right of property which he may use as he pleases; it is not a trust but a proprietary right subordinate to the owner's freedom of will. The propriety or impropriety of his motive is immaterial. "There is no obligation on a shareholder of a company to give his vote merely with a view to what other persons may consider the interest of the company at large. He has a right, if he thinks fit, to give his vote from motives or promptings of what he considers his own individual interest" (*Pender v. Lushington*, 1877, 6 Ch. D., at p. 75). In *Burns v. Siemens Bros.*, 1919, 1 Ch. 225, where articles provided that the first of the joint holders of shares only could vote, it was held that in order to enable them effectively to exercise their voting powers they were entitled to have their holding split into two joint holdings, with their names in different orders. A majority of members will not be allowed by vote to commit a fraud on the minority (*Menier v. Hooper's Telegraph Co.*, 1874, L. R., 9 Ch. 350). It is not competent for a majority of debenture holders to sanction a sale by the company of all its assets and a division of the proceeds amongst some only of their number (*re New York Taxicab Co.*, 1913, 1 Ch. 1).

Directors are usually forbidden by the articles to vote as directors on contracts in which they are interested, but may vote as shareholders (see *East Pant du United Lead Mining Co. v. Merryweather*, 1864, 2 H. & M. 254). Section 149 of the Act of 1929 provides that directors must declare the nature of their interest at a meeting of directors. The section directs the manner in which the disclosure is to be made and expressly provides that nothing in the section is to be taken to prejudice the operation of any rule

of law restricting directors from having any interest in contracts with the company. A penalty of £100 is provided for non-compliance with these requirements. Even where the articles allow directors to enter into contracts with their companies, the Stock Exchange requires that they should not be allowed to vote upon matters in which they are interested.

The registered holder of shares in a company, who had mortgaged them, and had also executed a blank transfer in favour of the mortgagees, was adjudicated bankrupt. His name remained on the register, but his trustee in bankruptcy disclaimed all interest in the shares. It was held that as the bankrupt's name remained on the register he had the right to vote in respect of the shares, such right being exercisable at the dictation of those beneficially interested in the shares (*Wise v. Lansdell*, 1921, 37 T. L. R. 167).

Those who do not choose to vote on the question before the meeting are considered to vote with the majority of the voters, and so of those who are absent.

Articles provided that no member shall be entitled to vote whilst any calls are outstanding and that shares were liable to forfeiture for nonpayment. Shares were forfeited and resold by the company to a purchaser, to whom a certificate was issued, stating that he was deemed to be the holder of the shares discharged from all calls due. It was held that the purchaser was not entitled to vote whilst any calls were due from the original holder of the shares (*Randt Gold Mining Co. v. Wainwright*, 1901, 1 Ch. 184). Where an executor under the articles shows that he alone has the right to transfer shares he has the right to vote, subject to any other provisions restricting that right, although he holds the shares subject to an equitable charge (*Marks v. Financial News*, 1919, 35 T. L. R. 681).

In *Coulson v. Austin Motor Co.* (1927, 43 T. L. R. 493) articles provided that holders of preference shares should not have the right to attend and vote unless the dividend was in arrear. It was held that the words "in arrear," in the context in which they appeared in the articles, could not be construed to cover the non-payment of a non-cumula-

tive preference dividend payable out of the profits of each year and not paid because there were no profits available for the dividend.

Class interests.—"While usually a holder of shares or debentures may vote as his interest directs, he is subject to the further principle that where his vote is conferred on him as a member of a class he must conform to the interest of the class itself when seeking to exercise the power conferred on him in his capacity of being a member" (British America Nickel Corporation v. O'Brien, 1927, A. C., at p. 373), but see Goodfellow v. Nelson Line (1912, 2 Ch. 324).

VOTES OF MEMBERS

Table A, Clauses 54-62 (*post*, p. 341), contain the provisions usually made in articles regulating the voting of joint holders, persons of unsound mind, and those who are not entitled to vote, and for voting personally or by proxy.

Section 116 of the Act provides for the representation of companies at meetings of other companies (see p. 180).

In *re Kelantan Coco Nut Estates* (*ante*, p. 181) it was held that such a representative could form part of a quorum and could therefore presumably vote on a show of hands, which latter power apparently may be exercised by executors, trustees, and committees of lunatic persons, who may exercise the same right of voting as the person whom they represent, if the articles so provide.

A person may be entitled to vote at a meeting of debenture holders although no debentures have in fact been issued to him, if debentures have been allotted to him and he has the right to call for such debentures and is bound to accept them (*Dey v. Rubber & Mercantile Corporation*, 1923, 2 Ch. 528).

1. SHOW OF HANDS

Unless the articles otherwise provide—

- (1) Voting, in the first instance, is usually by show of hands. Voting may be by *voice*, but this method is only adopted when it is obvious that the meeting is practically unanimous ;

- (2) Everyone personally present and entitled to vote has one vote only, independent of the number of shares or proxies he holds. It is desirable, since members may be entitled on occasions to attend meetings at which they are not entitled to vote, that all attending should sign their names in the attendance book on entering the room.

Table A provides :—

50. At any general meeting a resolution put to the vote of the meeting shall be decided on a show of hands, unless a poll is (before or on the declaration of the result of the show of hands) demanded by at least three members present in person or by proxy entitled to vote or by one member or two members so present and entitled, if that member or those two members together hold not less than fifteen per cent. of the paid-up capital of the company, and, unless a poll is so demanded, a declaration by the chairman that a resolution has, on a show of hands, been carried, or carried unanimously, or by a particular majority, or lost, and an entry to that effect in the book of the proceedings of the company shall be conclusive evidence of the fact, without proof of the number or proportion of the votes recorded in favour of, or against, that resolution.

Where on a show of hands there are two resolutions before a meeting of shareholders, one for the reduction of capital and another for the conversion of preference shares into ordinary shares, and where there is a right to a poll, the chairman may put the resolutions *en bloc* if no shareholder requires him to put them separately (*re Jones, 1933, 50 T. L. R. 31*).

This provision by Table A follows Section 117, Subsection (3), in respect of extraordinary or special resolutions that a chairman's declaration is conclusive as to whether a resolution is carried in the absence of a poll applies to all resolutions *if accompanied by an entry in the minute book of the company*, unless fraud or obvious mistake be proved. Where articles give a right to demand a poll to members holding at least a specified number of shares, *joint holders* of the specified number of shares may demand a poll without the support of any other member (*Burns v. Siemens Bros., 1918, 2 Ch. 324*). Apparently a beneficiary can direct the

legal owner of shares to vote as he directs (*Wise v. Lansdell*, 1921, 36 T. L. R. 167), but the company is not concerned to inquire as to the beneficial interest, and must accept the vote of the registered holder of the shares (*Siemens v. Burns* (No. 2), 1919, 1 Ch. 225).

Exclusion from voting.—There is nothing to prevent articles from providing for any *class* of shareholders being excluded from voting at all, in which case apparently such a class is not entitled to be summoned to general meetings (*re Mackenzie & Co.*, 1916, 2 Ch. 450).

2. DEMANDING A POLL

Members of a company have a right to demand a poll at Common Law unless the articles expressly exclude such a method of voting, but as regards extraordinary or special resolutions, members have a statutory right to demand a poll (Section 117, *ante*, p. 210). Table A, Clause 50, provides that a poll must be demanded by three members or by either one or two members holding not less than fifteen per cent. of the paid-up capital. If there is no provision in the articles as to the right of demanding a poll, one member may demand a poll (*Campbell v. Maund*, 1836, 5 A. & E. 865). It follows therefore that in regard to extraordinary and special resolutions a poll may be demanded by the number of members specified in the articles, provided that it shall not be necessary for more than five persons to make the demand. If no provision is made by the articles, three members or one or two members holding at least 15 per cent. of the capital may make the demand (s. 117). In regard to ordinary resolutions, a demand for a poll is governed by the articles only. It should be demanded immediately after the show of hands has been declared—the latter being thereby nullified—and it is the chairman's duty to grant it, and to fix the time and place for the poll in accordance with the regulations on the subject, if any. A poll may then be demanded even if other business has intervened between the putting of the motion and the declaration (*Lattey v. National Rifle Association*, *The Times*, 28th February, 1914). It was held in

R. v. Wimbledon Local Board (1882, 8 Q. B. D. 459) that the right to demand a poll existed by the Common Law, but may be excluded by express provision. "When a poll is demanded, it is an abandonment of what was done before; and that everything exterior is not of the substance of the election, nor to be so received" (Anthony v. Seger, 1789, 1 Hagg Cons., p. 13).

When a poll may be demanded by a requisition of the holders of a certain number of shares, and there is a definition clause in the articles providing that the plural shall include the singular and *vice versa*, a requisition signed by a person who holds the requisite number of shares or by persons who jointly hold such shares will be valid (Siemens Bros. v. Burns, 1918, 2 Ch. 324).

The members demanding a poll must, unless the articles otherwise provide, be present in person, and a proxy is not to be counted in the number demanding a poll (R. v. Government Stock Investment Co., 1878, 3 Q. B. D. 443), but it is very doubtful whether this decision would be upheld now. Where articles provide that a proxy need not be a member of the company, as in Clause 59 of Table A of 1929, it would appear that such a person can vote on a show of hands and therefore can be counted in the demand for a poll (Ernest v. Loma Gold Mines, 1897, 1 Ch. 1).

If the demand is challenged it must, of course, be justified, but it need not be justified if the chairman knows privately that the demand is, in fact, supported by the requisite number (*re* Phoenix Electric Light Co., 1883, 48 L. T. 260). If a poll is not taken after a proper demand therefor, the resolution which has been challenged is void (R. v. Cooper, 1870, L. R., 5 Q. B. 457).

A demand for a poll cannot be withdrawn after the meeting has been terminated, at all events where it has been seconded by a person who does not consent to the withdrawal, in circumstances where one person could demand a poll (R. v. Mayor of Dover, 1903, 1 K. B. 668).

* Section 117. (5) When a poll is demanded in accordance with this section, in computing the majority on the poll reference shall be had to the number of votes to which each member is entitled by virtue of this Act or of the articles of the company.

The articles control the manner in which a poll shall be taken, and generally leave it to the directors or the chairman of the meeting; but he is not thereby authorised to alter the prescribed method of voting. It is the duty of the chairman to decide whether a poll is properly demanded in accordance with the articles, and generally he has to determine how the poll is to be taken.

3. TAKING A POLL

1. A poll may be taken there and then if the articles so provide. The usual method is to require every member who is entitled to vote to sign a paper (in order to prevent personation) headed "for" or "against" the motion; the votes of each member are inserted, and these, having been added, the chairman declares accordingly. In *re* Chillington Iron Co. (1885, 29 Ch. D. 159) the articles gave power to the chairman to direct how a poll should be taken. He directed the poll to be taken then and there, and the poll was held to be rightly taken. Unless the articles otherwise provide for taking the poll, the chairman may direct the manner of taking it. At a meeting of a company where a poll was demanded, the chairman directed it be taken there and then although the articles provided that a poll should be held within seven days of the meeting. It was held that such a poll was illegal (*re* British Flax Producers Company, 1889, 60 L. T. 215). But a chairman cannot enlarge the power of voting, *e.g.* where voting papers are not contemplated by the articles he cannot direct that a poll should be taken by means of polling papers signed by the members and delivered at the offices of the company on a fixed day (*McMillan v. Le Roi Mining Co.*, 1906, 1 Ch. 331).

2. A member may vote personally at a poll, though not present when the poll was demanded (*Campbell v. Maund*, 1836, 5 A. & E. 865).

Articles frequently provide that where the poll has reference to the election of chairman, by the consent of the meeting or of the members present, the poll shall be taken at once; which would usually exclude those not

present when the demand for a poll was made. Where the poll is not taken at once, proper notice of the day and time of polling, together with the facts which have given rise to the demand, should be sent to every member entitled to vote. In any event the poll should usually be taken within three weeks of the demand for a poll.

3. Resolutions must be put to the poll separately and not *en bloc*, otherwise the poll is invalid. All the resolutions may, however, be included on one sheet of paper, to be separately marked by the voters (*Patent Wood Keg Syndicate v. Pearse*, 1906, W. N. 164; *Blair Open Hearth Furnace Co. v. Reigate*, 1913, 108 L. T. 665).

Apparently where there is an election of a board of directors who are to act together, the names of all who are to be elected together may be put in one resolution (*R. v. Brightwell*, 1839, 10 A. & E. 171).

4. Scrutineers are often appointed to report as to the correctness of the result, but this, though desirable, is not necessary unless the articles expressly provide for such appointment (*Wandsworth and Putney Gas Co. v. Wright*, 1870, 22 L. T. 404). Any irregularity in the appointment of scrutineers can be subsequently cured (*Lattey v. National Rifle Association*, *ante*, p. 227). Where the articles do not provide for the appointment of scrutineers they may be appointed by a resolution of the meeting or by the chairman with the assent of the meeting.

5. The chairman should fix the hours during which the poll is to take place; if he does not do so, he cannot close the poll so long as votes are coming in (*R. v. St. Pancras*, 1839, 11 A. & E. 15); but after waiting a reasonable time, if no more voters present themselves, he may declare the poll closed. The improper exclusion of a voter may invalidate a poll (*R. v. Rector &c. of St. Mary, Lambeth*, 8 A. & E. 356).

6. The right to vote and the number of shares held are determined by reference to the register of the members. "The register of shareholders, on which there can be no notice of a trust, furnishes the only means of ascertaining whether you have a lawful meeting or a lawful demand for

a poll, or of enabling the scrutineers to strike out votes" (*Pender v. Lushington*, 1877, 6 Ch. D., p. 78). Where there is a limitation of the number of votes which any member may exercise, he may distribute some of his shares among his friends as trustees for him, and this increases his voting power (*re Stranton Iron Co.*, 1873, L. R. 16 Eq. 559).

7. A poll is regarded as part of the proceedings of the day. "The taking of a poll is a mere enlargement of the meeting at which it was demanded" (*R. v. Wimbledon Local Board*, 1882, 8 Q. B. D., at p. 464; see also *Shaw v. Tati Concessions*, *post*, p. 238).

8. Under Table A, or under the common form of articles, a poll cannot be taken by sending voting papers to the members, to be returned by post. They or their proxies must attend and give the votes personally. A poll by direct voting papers must be expressly provided for (*McMillan v. Le Roi Mining Co.*, 1906, 1 Ch. 331). And see Table A, Clauses 51-53 (*post*, p. 341).

4. PROXIES

A proxy is a person appointed in the place of another to represent him, or the instrument by which a person is appointed so to act. There is no Common Law right on the part of a member of a company to vote by proxy, and this power can only be given by express provision in the articles. His right to vote can arise only by contract, and this being so he must observe the terms of the contract, *i.e.* the articles. If, therefore, the articles require that a proxy shall be attested, an unattested proxy must be rejected. The word "proxy" is more commonly used to denote the instrument (*i.e.* proxy paper) appointing the proxy. The person appointed a proxy cannot act as an attesting witness (*re Parrott*, 1891, 2 Q. B. 151).

Right of shareholder to vote is paramount to the right of the proxy.—In *Cousins v. International Brick Co.* (1931, 2 Ch. 90) the articles permitted that a vote given in accordance with the terms of an instrument of proxy would be valid notwithstanding the previous death of the principal

or revocation of the proxy, or transfer of the shares in respect of which the vote was given, provided no intimation in writing of the death, revocation or transfer should have been received at the office before the meeting. It was held that the object of the article was not to preclude a shareholder who had given a valid proxy from voting in person but to protect the company from any liability to inquire whether a proxy validly used had been revoked or not, and that in the absence of any special contract between a shareholder and the company expressly excluding the right to vote in person where a valid proxy has been given, the right of shareholders to vote in person is paramount to the right of the proxy.

Appointment of proxy.—In *Colonial Gold Reefs, Limited v. Free State Rand, Limited* (1914, 1 Ch. 382), articles provided that no person should be appointed a proxy who was not a member of the company, and by Article 73 that no objection should be made to the validity of any vote except at the meeting or poll at which such vote should be tendered, and every vote not disallowed at such meeting or poll, and whether given personally or by proxy, should be deemed valid for all purposes whatsoever. Proxies had been given to A, who was not a member of the company, and failing him to B, who was a member. A voted under these proxies, and no objection was taken at the time. It was held that the validity of these votes could not be afterwards disputed.

A vote given by the representative of a company under a resolution passed pursuant to Section 116 of the Act can be properly admitted by the chairman on the evidence afforded by a copy of such resolution. Articles of an English company provided that "the instrument appointing a proxy shall be in writing under the hand of the appointor or his attorney duly authorised in that behalf, or, if such appointor is a corporation, under its common seal." A South African company, having no common seal and not required to have one, was a shareholder in an English company, and under the hands of two directors appointed an attorney in England to vote on its behalf with power of substitution. Acting

under this power the attorney appointed himself proxy in the form prescribed by the articles, and claimed to vote either under the power of attorney or under proxy. The chairman rejected this vote. It was held that the requirement of a common seal in the articles only applied to corporations having a common seal according to English law, and that the attorney of the South African company was entitled to vote at any rate under the proxy, if not under the power of attorney itself (*Colonial Gold Reefs v. Free State Rand*, *ante*, p. 232). Where articles prescribe that proxies must be in a specified form or as near thereto as circumstances permit, and the specified form is a proxy applicable to a single meeting, general proxies, properly stamped, should not be excluded (*Isaacs v. Chapman*, 1915, 32 T. L. R. 183).

Where articles provided that a shareholder only could be appointed to act as a proxy, it is no objection to a proxy duly lodged that an unqualified person is named therein, provided the disqualification is removed before the proxy is used (*Bombay-Burmah Co. v. Shroff*, 1905, A. C. 213).

See Table A, Clauses 58-62 (*post*, p. 341), as to proxies.

In *Peel v. London and North Western Railway Co.* (1907, 1 Ch. 5) it was held that it was the duty of the directors to inform the shareholders of the facts of their policy, and the reasons why they considered that this policy should be maintained and supported by the shareholders, and that they were justified in trying to influence and secure votes for this purpose, and accordingly that expenses which had been *bonâ fide* incurred in the interests of the company were properly payable out of the funds of the company: *e.g.* issuing of stamped proxy papers containing the names of three of the alternative directors as proxies, with a stamped cover for return.

Requirements of articles must be complied with.—

The form of proxy must be substantially the same as that provided by the articles. If required by the articles, it must be deposited with the company for a certain number of hours prior to the meeting.

Where articles provided that votes might be given

by proxy but were silent as to the manner in which the proxy was to record such votes, it was held that the voting papers merely signed "George Foerster, for self and proxies" were in order (*Foerster v. Newlands Mines*, 1902, 46 S. J. 409).

If required to be sent by post, it should be addressed to the proper officers, so as to get into the hands of the company. In *Burnett v. Gill*, *The Times*, 13th June, 1906, p. 4, articles provided that no person should be entitled to vote as a proxy unless the instrument appointing him should be deposited at the office of the company forty-eight hours before the meeting. It was held that not only must the instrument be deposited at the office of the company forty-eight hours before the meeting but it must be addressed to the proper officer of the company. When addressed to a person without any reference to the company or any intimation that it was other than an ordinary business communication addressed, too, to the care of a person not named as an official of the company and at an office not solely belonging to the company, but where that person carried on business on his own account, it could not be considered such a "deposit" as required by the articles, the object of which was to give time for examination of a document of such importance and for authentication of the person purporting to give it as duly qualified to do so.

The authority of the proxy must be in writing, but it is not essential that the proxies should be produced at the meeting, and if duly lodged at the place required by the regulations, the result of the proxies may be communicated by letter or telegram (*re English, Scottish, &c., Bank*, 1893, 3 Ch. 385). In this case the Court directed particulars of the Australian proxies to be telegraphed to the official receiver and the proxies to be counted at the meeting.

If the articles provide for attestation to a proxy, it must not be omitted. "The right of a shareholder to vote by proxy depends on the contract between himself and his co-shareholders, and where parties have a right depending upon the contract between them and the other parties, there, in my opinion, all the requisitions of the contract as to the

exercise of that right must be followed. In my opinion, therefore, the proxy papers which were not attested as required by the articles were improperly admitted by the chairman" (*Harben v. Phillips*, 1883, 23 Ch. D., p. 32).

At a meeting of a particular class of shareholders, only a member of that class can be appointed proxy.

Stamping of proxies.—A proxy paper for one specified meeting requires a penny stamp, adhesive or impressed; if the former, it must be cancelled by the person executing the instrument. An adhesive stamp used on a letter or power of attorney for appointing a proxy to vote at a meeting is sufficiently cancelled within the meaning of Section 8, Sub-section (1), of the Stamp Act, 1891, by the writing across it of part of the name of the person cancelling it, or the date of cancellation alone, or other marks of a defacing nature (*McMullen v. "Sir Alfred Hickman" Steamship*, 1902, 71 L. J., Ch. 766). This proxy cannot be stamped after execution unless executed abroad. The Finance Act, 1907, Section 9, provides that a proxy executed abroad can now be stamped with a penny stamp within thirty days after arrival in the United Kingdom. A proxy bearing the words "or at any meeting of the company that may be held in the year," cannot be stamped with a penny stamp; neither can a proxy to vote "at the next election" sufficiently specify the meeting to come within the provision allowing a penny stamp (*R. v. McInerney*, 1891, 30 I. R. 49). Proxies in which the day of meeting is not named may be stamped after execution with a ten shilling stamp (*re English, Scottish, &c., Bank*, 1893, 3 Ch. 385).

A proxy is a delegation of authority for a particular purpose then in contemplation of the person giving it. Proxies were given in November and December, 1886, by the governors of an infirmary for a contemplated election between E. and C. for the post of surgeon. The particular election did not take place, owing to the retirement of C. It was held that the proxies so given were properly rejected at a subsequent election in April, 1887, between E. and J. (*Howard v. Hill*, 1889, 59 L. T. 818).

A person who has given a proxy may verbally authorise the person to whom it is given or any other person to fill in the blanks, *e.g.* date of meeting or name of proxy. But separate proxies for separate specified meetings may each be stamped with a penny stamp and used for the specified meetings. Companies often issue proxies in blank as to date of meeting, together with an agreement authorising the proxy to fill in the date; such an agreement appears to require a ten shilling stamp as a letter of attorney. In *ex parte Lancaster* (1877, 5 Ch. D. 911), it was held that a proxy paper signed by a creditor, leaving the name of proxy in blank, may be filled up by the person to whom the creditor has entrusted it, with a verbal authority to use it, and that when so filled up it will be valid. In *Sadgrove v. Bryden* (1907, 1 Ch. 318), it was held that provided a proxy paper be stamped with a penny stamp on execution, the date of execution and the date of the meeting at which it is to be used may be filled in afterwards by any person duly authorised by the giver of the proxy to do so, even though at the time of execution the date of the meeting has not been fixed. If required for several meetings (*i.e.* a general proxy) a ten shilling stamp is necessary (Stamp Act, 1891, Sched. I).

Appointment and validity of proxies.—The member giving the proxy must be entitled to vote: *e.g.* articles may disqualify members whose calls have not been paid. A call is not due until the day fixed for payment, and the amount payable on allotment is not a call. Unless the articles permit, or the shares have been transferred into their names as members, neither the representatives nor the trustee of a bankrupt shareholder may vote.

The person appointed must be competent to act as a proxy: *e.g.* some articles require that no person not a member may act as proxy. If the meeting is of a particular class, the proxy must be held by a person of that class (*re Madras Irrigation Co.*, 1881, W. N. 120, followed in *re Central Bahia Railway Co.*, 1902, 18 T. L. R. 503). But by Section 116 of the Act any company which is a member of another company has a statutory right to nominate any person to

act as its representative with that other company. (See *ante*, p. 180.)

Alternative persons may be named in a proxy in order to guard against failure to attend. If the proxy states "in my absence to attend and vote," the presence of the appointor necessarily revokes the proxy. If the appointor of a proxy attends the meeting himself, his presence does not necessarily avoid the instrument of proxy, but if he votes before his proxy has voted for him, he impliedly revokes the proxy (*Knight v. Bulkeley*, 1859, 5 Jur. N. S. 817).

A proxy which was valid for an original meeting would be good for an adjourned meeting, as a meeting includes an adjournment of it.

Deposit in due time of a later proxy revokes one of earlier date, as also does death of appointor.

Proxy papers to be used at meetings to consider schemes of arrangement should follow the form settled by the Judge, which empowers the proxy "to vote for me and in my name [] the said scheme either with or without modification as my proxy may approve," and contains opposite the blank a marginal note as follows: "If for, insert 'for,' if against, insert 'against,' and strike out the words after scheme and initial such alterations." Proxies not according to this form will be properly rejected (*re Magadi Soda Co.*, 1925, 94 L. J., Ch. 217).

A proxy was appointed to act for a shareholder at a meeting to be held for the purpose of considering and, if thought fit, approving, with or without modification, a proposed scheme of arrangement. It was held that the power of voting conferred on the holder of the proxy was not confined to that of voting for or against the scheme, but was wide enough to enable him to use the proxy for the purpose of voting on a resolution to defer the consideration of the scheme to a future occasion (*re Waxed Papers, Ltd.*, 1937, 53 T. L. R. 676).

Where on an application for sanction to a scheme of arrangement proxies have been improperly rejected at meetings of the company, fresh meetings may be ordered.

explanatory circulars are sent to shareholders, the Court will look to see that they are fair and give all reasonable and necessary information and that the proposals are such as intelligent and honest members of the classes concerned, acting in their own interests, would approve (*re* Dorman, Long & Co., 1934, 1 Ch. 635; and see *Edinburgh Rail, &c. Co. v. Scottish Metropolitan Assur. Co.*, 1932, S. C. 2).

PROXIES AND ADJOURNED MEETINGS

An adjourned meeting, as regards notice, is regarded in law as a continuance of the original meeting (*Scadding v. Lorant*, *post*, p. 240). No new notice, when the adjournment is to a fixed date, is necessary, but an adjournment *sine die* would require a fresh notice (*Wills v. Murray*, *post*, p. 240). As regards proxies which are lodged after the date of the original meeting, but before the adjourned meeting, it is now settled that they are invalid (*McLaren v. Thomson*, 1917, 2 Ch. 261, following *Scadding v. Lorant*, *post*, p. 240) *unless the articles make some provision as follows*: "The instrument appointing a proxy shall be deposited at the registered office of the company not less than forty-eight hours before the time for holding the meeting, whether such meeting be an original or an adjourned meeting" (see also *ante*, p. 221, as to business at adjourned meetings).

In *Shaw v. Tati Concessions* (1913, 1 Ch. 292) a poll demanded at a meeting was directed to be taken at a future date, but the meeting itself was not adjourned. It was held that the mere postponement of the poll was not an adjournment *ad hoc* of the meeting within the meaning of an article allowing the lodgment of proxies forty-eight hours before a meeting or adjourned meeting, but the original meeting continued for the purpose of the poll, and no fresh proxies could be lodged.

In *Spiller v. Mayo* (1926, L. J. N. 301) it was held that where a meeting was held on December 15th and a poll ordered to be taken on December 22nd, a notice of revocation of a proxy received on December 18th was not received before the meeting, the taking of the poll being a continuation of the

meeting A poll therefore is a continuation of the meeting, which is not at an end until the poll is taken

RIGHTS OF PROXIES

By the articles the right of a proxy is generally limited to voting, and usually a proxy must be a shareholder. A proxy who is not a shareholder who has the right by the articles to attend has no right to move or second a resolution unless express provision therefor is made in the articles.

CHAPTER XXI

MEETINGS OF SHAREHOLDERS

ADJOURNMENTS, POSTPONEMENTS, AND MINUTES
ADJOURNMENTS

THE power of adjournment appears to be at Common Law incident to a meeting of a corporate body (*R. v. Wimbledon Local Board*, 1882, 8 Q. B. D. 459) and must be to some fixed day. Motions for adjournment can generally be brought forward at any period of the meeting, and take precedence of any matter then under consideration. Such motions, unless specially provided otherwise, need not be in writing or formally seconded. "It is impossible to support an election which was proceeded in by a part only of the electors who remained behind after the rest were gone away, in consequence of a dissolution of the assembly to which no objection was made at the time" (*R. v. Gaborian*, 1809, 11 East, p. 90).

Articles usually give power to the chairman, either with or without the consent of the meeting, to adjourn a meeting. But if he has no power and improperly attempts to stop the meeting against the wish of those present they may continue the business in his absence. Apparently a chairman has inherent power to adjourn a meeting when it is impossible to transact business on account of disorder, or to take a poll (*R. v. D'Oyly*, *post*, p. 241).

As regards notice, an adjourned meeting is regarded in law as a continuance of the original meeting (*Scadding v. Lorant*, 1851, 3 H. L. C. 418), and a fresh notice is not therefore necessary (*Wills v. Murray*, 1850, 4 Ex. 843), unless, of course, the articles require such a notice to be given. "But, in my opinion, the power which has been contended for is not within the scope of the authority of the chairman—namely, to stop the meeting at his own will and pleasure. . . . The meeting by itself can resolve to go on with the business for which it has been convened, and appoint a chairman to conduct the business which the other chair-

man, forgetful of his duty or violating his duty, has tried to stop because the proceedings have taken a turn which he himself does not like" (National Dwellings Society v. Sykes, 1894, 3 Ch., p. 162).

As regards resolutions.—See Section 119, *ante*, p. 218.

The power of adjournment, apart from express provision in the articles, seems to rest entirely with the meeting, and unless the meeting is unanimous the decision of the majority probably does not bind the minority, who, if it constitutes a quorum, may elect a chairman and continue the business of the company should the majority leave the meeting. (See *Catesby v. Burnett*, *ante*, p. 177.)

If the articles provide that the *meeting* may adjourn itself, that means a majority of the meeting, which need not therefore be unanimous.

Provided the object is to facilitate and not to frustrate the business of a meeting, and there is no provision as to adjournment of general meetings in articles—*e.g.* to take a poll—the chairman may adjourn a meeting on his own authority. "It is on him that it devolves, both to preserve order in the meeting and to regulate the proceedings so as to give all persons entitled a reasonable opportunity of voting. He is to do the acts necessary for these purposes on his own responsibility, and subject to being called upon to answer for his conduct if he has done anything improperly" (*R. v. D'Oyly*, 1840, 12 A. & E., p. 159).

When the articles provide "the chairman may, with the consent of the members present at any meeting, adjourn the same," the chairman is not thereby bound to adjourn. He has an absolute discretion. "Upon the true construction of Article 66, the chairman is not bound to adjourn the meeting even though a majority of those present desire the adjournment" (*Salisbury Gold Mining Co. v. Hathorn and Others*, 1897, A. C., p. 274).

But as regards the statutory meeting, the power of adjournment is in the hands of the *meeting* and not that of the chairman. Section 113, Sub-section (8), provides the *meeting*, *i.e.* the majority, may adjourn from time to time; and see Table A, Clause 49 (*post*, p. 340).

POSTPONEMENTS

The directors of a limited company, in the absence of express authority in the articles of association, have no power to postpone a general meeting of the company properly convened (*Smith v. Paranga Mines*, 1906, 2 Ch. 193). If they endeavour to exercise such a power the shareholders can, if they think fit, meet at the original appointed place, time, and day, and transact all the business which was properly before the meeting as first convened. If the directors wish to postpone a meeting, the only way is to meet formally and get the meeting to adjourn itself to a more suitable and convenient time.

MINUTES OF GENERAL MEETINGS

Minutes of meetings of shareholders must be open to the inspection of members, but not minutes of meetings of directors.

Section 121 of the Act provides :—

(1) The books containing the minutes of proceedings of any general meeting of a company held after the commencement of this Act shall be kept at the registered office of the company, and shall during business hours (subject to such reasonable restrictions as the company may by its articles or in general meeting impose, so that no less than two hours in each day be allowed for inspection) be open to the inspection of any member gratis.

(2) Any member shall be entitled to be furnished within seven days after he has made a request in that behalf to the company with a copy of any such minutes as aforesaid at a charge not exceeding sixpence for every hundred words.

(3) If any inspection required under this section is refused or if any copy required under this section is not sent within the proper time, the company and every officer of the company who is in default shall be liable in respect of each offence to a fine not exceeding two pounds and further to a default fine of two pounds.

(4) In the case of any such refusal or default, the court may by order compel an immediate inspection of the books in respect of all proceedings of general meetings or direct that the copies required shall be sent to the persons requiring them.

There must be a record of the proceedings of meetings of a company, Section 120, *post*, p. 243. In proceedings against

a company or its directors, the absence from the minutes of any reference to a subject is usually regarded as *primâ facie* evidence that it was not brought before the meeting, but express evidence may be given to prove what was in fact done and what resolutions were passed (*re* Fireproof Doors, 1916, 2 Ch. 142).

Reports and minutes.—Minutes being *primâ facie* evidence of the proceedings of meetings are usually taken as accurate in legal proceedings until the contrary is proved. It is essential, therefore, that they contain a full and accurate record of all business done, and in particular of the resolutions passed at the meetings of the company. The record should be impartial and above suspicion. A clear distinction should be carefully drawn between a report and a minute. The former chiefly consists of what was said and its place of record is the newspaper; the latter consists of what was done or agreed upon, and its place of record is the minutes. Speeches and arguments form the proper material of the newspaper report, the resolutions and decisions are the proper material for the minutes.

Entries in the minutes must be made within a reasonable time.—Where articles require that a resolution should be entered in the minutes without specifying the time in which it should be entered, it must be made within a reasonable time, otherwise the resolution is invalid. A delay of over a year is not within a reasonable time (*Toms v. Cinema Trust Co.*, 1915, W. N. 29).

Section 120 of the Act provides :—

(1) Every company shall cause minutes of all proceedings of general meetings, and where there are directors or managers, of all proceedings at meetings of its directors or of its managers, to be entered in books kept for that purpose.

Loose leaves fastened together in two covers by screws were not admitted in evidence as a book within the meaning of section 120 (*Hearts of Oak Assurance Co. v. Flower*, 1936, 1 Ch. 76).

(2) *Any such minute if purporting to be signed by the chairman of the meeting at which the proceedings were had, or by the chairman of the next succeeding meeting, shall be evidence of the proceedings.*

Confirmation by the subsequent meeting is not required, though it is usual and most desirable.

(3) Where minutes have been made in accordance with the provisions of this section of the proceedings of any general meeting of the company or meeting of directors or managers, then, until the contrary is proved, the meeting shall be deemed to have been duly held and convened, and all proceedings had thereat to have been duly had, and all appointments of directors, managers, or liquidators, shall be deemed to be valid.

A limited company formally passed a resolution to wind up its affairs voluntarily, and the resolution was entered in the company's minute book. Certain members of the company subsequently gave notice of a meeting to have that minute rescinded and deleted from the minute book. A shareholder and creditor of the company thereupon brought an action of declarator (*i.e.* declaration) that the company had passed the resolution in question, and for interdict (*i.e.* injunction) against the rescission, and in particular the deletion from the minute book of the signed minute containing that resolution. The Sheriff Substitute having allowed a proof, the company appealed. It was held that the Sheriff Court had jurisdiction to entertain the action, and the appeal was dismissed.

"As appears from the minute book itself, the action has not been effectual to prevent the *de facto* deletion of the minute from the book. It was not disputed for the company that a resolution in the terms of the defaced minute was formally passed, but it is objected that the resolution was invalid because it was not preceded by the requisite notice, and was not passed by the requisite majority. It seems clear that an action brought to prevent the anticipated attempt to delete the minute, and so to destroy the proper evidence of the commencement of the liquidation, is a competent proceeding at Common Law; and though it has not been effectual to prevent the defacement of the minute

I think it may in the circumstances be allowed to proceed with a view to establishing by declarator the regular passing of a valid resolution. If the minute had not been defaced, it would have been good evidence of this until the contrary was proved. Further, if the objections to the validity of the resolution stated on behalf of the company are well founded, there is no liquidation and no liquidation proceedings" (*Grieve v. Kilmarnock Motor Co.*, 1923, 60 Sc. L. R. 290).

When duly signed by the chairman, minutes are *primâ facie* evidence of the proceedings which they purport to minute, until the contrary is proved. The confirmation of the minutes by a meeting *merely verifies their accuracy*; it does not necessarily mean that such minutes are adopted or that the resolutions therein are confirmed or ratified (see *ante*, p. 154). "The minutes in the books are to be received, not as conclusive but as *primâ facie* evidence of resolutions and proceedings at general meetings; and also it may be added, and I think correctly, that inasmuch as the chairman who presides at such meetings, and has to receive the poll and declare its result, has *primâ facie* authority to decide all emergent questions which necessarily require decision at the time, his decision of these questions will naturally govern, and properly govern, the entry of the minute in the books; and, though in no sense conclusive, it throws the burden of proof upon the other side, who may say, contrary to the entry in the minute book following the decision of the chairman, that the result of the poll was different from that there recorded" (*re Indian Zoedone Co.*, 1884, 26 Ch. D., p. 77).

The signature of the chairman.—Minutes are sometimes read, or if previously circulated to the members, taken as read, at the next following meeting, and submitted for verification of their correctness. If regarded as a correct report of the proceedings by those members present at that meeting, they are signed by the chairman. If considered incorrect, they may be modified.

The chairman of the meeting, or more usually of the

succeeding meeting of directors, whether present or not at the previous meeting, may, in accordance with Section 120 (*ante*, p. 244), sign the minutes. In *Southampton Dock Co. v. Richards* (1840, 1 M. & G. 448), where the rules provided that minutes should be signed by the chairman at each respective meeting, it was held that the signature of the minutes of the meeting by the chairman at the following meeting at which the same chairman presides is sufficient.

The signature of the chairman to the minutes embodying the terms of a contract may be sufficient to satisfy the Statute of Frauds (*Jones v. Victoria Graving Dock*, 1877, 2 Q. B. D. 314). The chairman is not bound to sign the minutes *after* confirmation by a succeeding meeting, though it is usually desirable for him to wait until they are confirmed.

It is customary for the minutes of a meeting to be read or taken as read at the next meeting and for the then chairman to ascertain from the meeting whether they are a true and accurate record of what was done at the preceding meeting, and to sign them if approved; or if any amendment is required it is first made and initialled by him and the minutes are then signed. It is usual also to have an amendment to the resolution "that the minutes of . . . were signed as correct," recording the alteration in the minutes noted in the succeeding minutes of the proceedings. The responsibility for the accuracy of the minutes is thus properly borne by the meeting, but of course Section 120 (*ante*, p. 243) only provides for the signature of the chairman *without verification by the meeting*.

In *Sheffield, &c., Rail Co. v. Woodcock* (1841, 7 M. & W. 574), it was held that minutes purporting to be signed "W. S., deputy chairman," was evidence *per se*, without proof, that W. S. was in fact deputy chairman, or, as such, presided at the meeting.

A local director present at a meeting in London, at which the minutes of the last meeting, when it was resolved to transfer the shares to a trustee for the company, were read and confirmed, though not present until after the commencement of the proceedings, and denying all knowledge of the resolution or transaction, was held to have

been affected with notice, and liable in respect of the transaction. But another local director present only at a subsequent meeting, at which the formal minute of approval of a transfer to A was confirmed, was held not to have been affected with notice, and not liable (*Ashhurst v. Mason*, 1875, 44 L. J., Ch. 337).

Where the articles provide, as in Table A, Clause 50, respecting entry of declaration of chairman as regards the result of a poll, that the signed minutes of the proceedings at a general meeting are conclusive evidence that the proceedings were regular, the Court may not only take note of any apparent irregularity in the meeting itself, but may also inquire into any matter dealt with at the meeting which does not appear in the minutes—i.e. may go behind the minutes (*Betts & Co. v. Macnaghten*, 1910, 1 Ch. 430).

Presumption failing minutes.—"It was the duty of the company to keep exact and accurate minutes of what took place at their general meetings, and if those minutes are not forthcoming it must be assumed as against the company that whatever the directors ought to have brought forward at that general meeting, whatever *then* ought in conformity with the antecedent proceedings of the directors to have been submitted to the shareholders, that was actually so submitted" (*re British Provident &c. Assurance Society*, *Lane's Case*, 1864, 1 De. G., J. & S., p. 509; *re Liverpool Household Stores*, 1890, 59 L. J. Ch. 616).

Alteration of minutes.—Minutes once made and signed should never be altered or corrected. "I trust I shall never again see or hear of the secretary of a company, whether under superior directions or otherwise, altering minutes of meetings, either by striking out anything or adding anything" (*re Cawley & Co.*, 1889, 42 Ch. D., p. 226).

It is most improper to remove a page from the minute book, the pages of which should be numbered consecutively. Frequent alterations or mutilation of the minutes, even when made before the chairman has signed, necessarily give rise to suspicions of bad faith.

Minutes of meetings of creditors and contributories under a winding up by the Court.—The Companies (Winding-up) Rules, 1929, No. 143, provide that the chairman shall cause minutes of the proceedings at the meeting to be drawn up and fairly entered in a book kept for that purpose, and the minutes shall be signed by him or by the chairman of the next ensuing meeting. These are the only proper record of the proceedings (*re* Radcliffe, 1875, L. R., 10 Ch. 631). See *post*, Chapter XXIII.

CHAPTER XXII

MEETINGS OF SHAREHOLDERS

QUALIFIED PRIVILEGE IN SPEECHES AND REPORTS

USUALLY the only defence available to a speaker or writer in regard to alleged defamatory statements made at a meeting of a limited company, or in connection therewith, is that of privilege. The law of libel affecting other meetings is considered fully in Chapter IX.

The following statements, either in the form of speeches at or reports in connection with company meetings, are privileged in a qualified * sense, *provided they are only published to those who have a common interest in them and are published bonâ fide and without malice*

1 When made with the object of protecting some interest of the speaker or writer to a person who has an interest in or duty in connection' with the subject-matter of the statement

2. When made on a matter in which there is an interest common to the speaker or writer and the person to whom such a statement is made. Speeches and reports in connection with companies are privileged if made to persons who have a common interest in the matter *and no others* (e.g. shareholders). Matters of idle gossip or those which only have an interest due to curiosity are not privileged.

PRIVILEGE IN SPEECHES AT GENERAL MEETINGS IS QUALIFIED AND NOT ABSOLUTE

When shareholders *quâ* shareholders meet together for the purpose of discussing matters affecting their personal interests untrue defamatory statements are privileged—at least to the extent of the following limitations. “The question is whether he is using the occasion honestly or abusing it” (Royal Aquarium Society *v* Parkinson, 1892, 1 Q. B. 443)

The belief of the defendant that there was a duty to make the defamatory statement is irrelevant to the question

* For distinction between absolute and qualified privilege see *ante*, p. 68

whether the occasion is privileged. The test is, What is the defendant's duty, and not what he thinks to be his duty (*Whiteley v. Adams*, 1863, 15 C. B. 392). Privilege does not extend to gossip, extraneous or irrelevant matter, nor to unnecessary publication.

In slander or libel the term "privileged communication" "comprehends all cases of communications made *bonâ fide* in pursuance of a duty, or with a fair and reasonable purpose of protecting the interests of the party using the words. . . . It is true that the facts proved are consistent with the presence of malice as well as its absence . . . in cases of privileged communication, malice must be proved, and therefore its absence must be presumed until such proof is given" (*Somerville v. Hawkins*, 1850, 10 C. B. 589).

In *Allan v. Clarke* (*The Times*, 17th January, 1912, p. 16), per Scrutton, J.: "When a person spoke words about another which were defamatory of him the person defamed could bring an action in respect of the defamatory statement unless the person using the words could prove that they were true, but there might be a defence even although the words were not true. That was based upon public policy." "There were certain relations of life in which the law regarded it as important that people should speak honestly without fear of legal action. Directors of a company had a duty to discuss the affairs of their company and might discuss the conduct of the company's officials so long as they did so honestly. That was a privileged occasion. If, however, a director did not use but abused the occasion by showing malice or spite, the privilege was gone. He held this was a privileged occasion and the plaintiff must fail unless he could show that the defendant spoke the words maliciously. . . . To succeed, the plaintiff must show that the defendant used the words not honestly but maliciously against the plaintiff, intending to pay off grudges against him."

PUBLICATION

1. When the Press or public is present by express invitation of the person making the defamatory state-

ments.—In *Parsons v. Surgey* (4 F. & F. 247) a shareholder of a railway company summoned a meeting of shareholders, expressly invited reporters to attend, and made certain defamatory statements at the meeting. Cockburn, C.J., said: “The matter was certainly one of great interest and importance to the shareholders, and the discussion or publication of the results to them would have been excused. It could not, however, be a privileged communication, because others besides the shareholders were invited to attend the meeting; and it was particularly stated that the representatives of the public press would be there.”

2. Newspaper reports of the proceedings of a meeting, if containing defamatory statements, are not privileged unless of public interest (*Adam v. Ward*, 1917, 33 T. L. R. 277), *e.g.* a company prospectus of interest to the public (*Lotinga v. Lloyd*, *The Times*, 5th December, 1910). “A fair account of what takes place in a Court of Justice is privileged. . . . But it has never yet been contended that such a privilege extends to a report of what takes place at all public meetings” (*Davison v. Duncan*, 1857, 7 E. & B., p. 231).

In *Popham v. Pickburn* (1862, 7 H. & N. 891) a newspaper proprietor published without any comment a report made by a medical officer of health to a vestry board which contained libellous matter. “Undoubtedly the report of a trial in a Court of Justice in which this document had been read would not make the publisher thereof liable to an action for libel. . . . But no case has decided that the reports of what takes place at the meeting of such a body are so privileged” (at p. 897).

In *Ponsford v. Financial Times* (1900, 16 T. L. R. 248) it was held that the publication of a fair and accurate report in a newspaper of the proceedings at a shareholders’ meeting, at which statements defamatory of the cashier were made, was not privileged, since they were not of public concern, and the publication of them was not for the public benefit or interest and was therefore not protected by the Law of Libel Amendment Act, 1888 (see *ante*, p. 99). A news-

paper reporter has no right to attend company meetings (*Mayor of Tenby v. Mason*, *ante*, p. 98), but if he is a shareholder he can attend and make a report.

3. Reports sent to members of a company are *primâ facie* privileged (*Lawless v. Anglo-Egyptian Cotton Co.*, 1869, L. R., 4 Q. B. 262). In *Waller v. Loch* (1881, 7 Q. B. D. 619), "A" interested herself in obtaining subscriptions for the relief of the plaintiff. "B," who was interested in the case, applied to the defendant (Secretary of the Charity Organisation Society) for information as to plaintiff's character and received an unfavourable report, which, by leave of the secretary, she communicated to "A." The subscriptions were thereupon withdrawn. It was held that the report was a privileged communication, and that, in the absence of proof of malice, the action could not be maintained.

In *Quartz Hill Gold Mining Co. v. Beall* (1882, 20 Ch. D. 501), in which an order for an injunction was discharged, a solicitor acting for some shareholders in a company printed and circulated, but only among the shareholders, a circular strongly reflecting on the mode in which the company had been brought out, and proposing a meeting of shareholders to take steps to protect their interests. Jessel, M.R., said: "The circular appears on the face of it to be in the nature of a privileged communication. . . . In the present case the defendant says he is acting *bonâ fide*, and there is no evidence against him; but if there were, I think a judge should hesitate long before he decides so difficult a question as that of privilege upon an interlocutory application, the circular being, on the face of it, privileged, and the only answer being express malice."

4. Slander at company meeting.—An action will not lie for slanders spoken at a company meeting provided the allegations are relevant to its business and there is no malice, since to that extent they are privileged, and complaints reflecting on the conduct of its affairs to the directors or managers are also privileged (*Harris v. Thompson*, 1853, 13 C. B. 333). But a shareholder is not protected if he utters

slanders to another shareholder apart from a meeting in relation to the company's affairs (*Brooks v. Blanchard*, 1883, 1 Cr. & M. 779).

5. Privilege covers all incidents of transmission of a privileged communication in the ordinary course of business.—Where a business communication containing defamatory statements concerning the plaintiff, a manager of the company, was made by the defendants, the company, to another company on a privileged occasion, and, for the purpose of and incidentally to the making of the communication, the defamatory statements were in the reasonable and ordinary course of business published to clerks of the defendant company, it was held that the privileged occasion covered such a publication of those statements (*Edmondson v. Birch & Co.*, 1907, 1 K. B. 371), and publication to printers in similar circumstances will be privileged. But a want of proper caution, *e.g.* unnecessarily publishing a defamatory statement to those with no common interest in the matter or to the world at large, will render the publication actionable (*Brown v. Croome*, 1817, 2 Starkie, 297).

CHAPTER XXIII

MEETINGS OF CREDITORS AND
CONTRIBUTORIES IN A WINDING UP *

MODES OF WINDING UP

- (1) The winding up of a company may be either—
 - (a) by the court, or
 - (b) voluntary, or
 - (c) subject to the supervision of the court
- (2) The provisions of this Act with respect to the winding up apply, unless the contrary appears, to the winding up of a company in any of those modes (Section 156)

Under the Companies (Winding-up) Rules, 1929, r 29, where the petition is presented by a corporation, the affidavit is to be made by some director, secretary, or other principal officer thereof. An assistant secretary would not be regarded as a principal officer for the purpose of the rule (Practice Note, 1937, W N 350)

VOLUNTARY WINDING UP

Circumstances in which company may be wound up voluntarily Section 225 provides —

- (1) A company may be wound up voluntarily—
 - (a) When the period, if any, fixed for the duration of the company by the articles expires, or the event, if any, occurs, on the occurrence of which the articles provide that the company is to be dissolved, and the company in general meeting has passed a resolution requiring the company to be wound up voluntarily
 - (b) If the company resolves by special resolution that the company be wound up voluntarily
 - (c) If the company resolves by extraordinary resolution to the effect that it cannot by reason of its liabilities continue its business, and that it is advisable to wind up
- (2) In this Act the expression “a resolution for voluntary winding up” means a resolution passed under any of the provisions of sub section (1) of this section

* For Statutory Rules 1929 relating to meetings in a winding up see *post*, p 265
For Statutory Forms authorised by the Rules, see *post*, p 360

Voluntary winding up may be controlled by—

1. Members (Sections 231-236).
2. Creditors (Sections 237-245).

A voluntary winding up is always controlled by creditors, and is referred to in the Act as a “creditors’ voluntary winding up” unless a statutory declaration of solvency has been made by the directors of the company in accordance with Section 230. When such declaration has been made, such a winding up is referred to as a “members’ voluntary winding up.”

Provisions applicable to a Members’ Voluntary Winding Up.

231.—The provisions contained in the five sections of this Act next following shall apply in relation to a members’ voluntary winding up.

232.—(1) The company in general meeting shall appoint one or more liquidators for the purpose of winding up the affairs and distributing the assets of the company, and may fix the remuneration to be paid to him or them.

(2) On the appointment of a liquidator all the powers of the directors shall cease, except so far as the company in general meeting, or the liquidator, sanctions the continuance thereof.

233.—(1) If a vacancy occurs by death, resignation, or otherwise in the office of liquidator appointed by the company, the company in general meeting may, subject to any arrangement with its creditors, fill the vacancy.

(2) For that purpose a general meeting may be convened by any contributory or, if there were more liquidators than one, by the continuing liquidators.

(3) The meeting shall be held in manner provided by this Act or by the articles, or in such manner as may, on application by any contributory or by the continuing liquidators, be determined by the court.

234.—(1) Where a company is proposed to be, or is in course of being, wound up altogether voluntarily, and the whole or part of its business or property is proposed to be transferred or sold to another company, whether a company within the meaning of this Act or not (in this section called “the transferee company”), the liquidator of the first-mentioned company (in this section called “the transferor company”) may, with the sanction of a special resolution of that company, conferring either a general authority on the liquidator or an authority in respect of any particular arrangement, receive in compensation or part compensation for the transfer or sale, shares, policies, or other like interests in the

transferee company, for distribution among the members of the transferor company, or may enter into any other arrangement whereby the members of the transferor company may, in lieu of receiving cash, shares, policies, or other like interests, or in addition thereto, participate in the profits of or receive any other benefit from the transferee company.

(2) Any sale or arrangement in pursuance of this section shall be binding on the members of the transferor company.

(3) If any member of the transferor company who did not vote in favour of the special resolution expresses his dissent therefrom in writing addressed to the liquidator, and left at the registered office of the company within seven days after the passing of the resolution, he may require the liquidator either to abstain from carrying the resolution into effect, or to purchase his interest at a price to be determined by agreement or by arbitration in manner provided by this section.

(4) If the liquidator elects to purchase the member's interest, the purchase money must be paid before the company is dissolved, and be raised by the liquidator in such manner as may be determined by special resolution.

(5) A special resolution shall not be invalid for the purposes of this section by reason that it is passed before or concurrently with a resolution for voluntary winding up or for appointing liquidators, but, if an order is made within a year for winding up the company by or subject to the supervision of the court, the special resolution shall not be valid unless sanctioned by the court.

This section is sufficiently complied with by the sending of notices to the liquidator at the company's offices, although the question of whether the company is or is not to go into liquidation is to depend upon the number of dissentients, and the liquidator accordingly will not in fact come into existence until after that number has been ascertained (*re Needham's, Limited*, 1923, 68 S. J. 236).

The term "member" in Section 234 includes the estate of a deceased member; and, where due notice of the death and probate is given to the company, the executors, though not registered as members, are entitled to exercise the right of dissent (*Llewellyn v. Kasintoe Rubber Estates*, 1914, 2 Ch. 670).

235.—(1) In the event of the winding up continuing for more than one year, the liquidator shall summon a general meeting of the company at the end of the first year from the commencement of the winding up, and of each succeeding year, or as soon thereafter as

may be convenient, and shall lay before the meeting an account of his acts and dealings and of the conduct of the winding up during the preceding year.

(2) If the liquidator fails to comply with this section, he shall be liable to a fine not exceeding ten pounds.

236.—(1) As soon as the affairs of the company are fully wound up, the liquidator shall make up an account of the winding up, showing how the winding up has been conducted and the property of the company has been disposed of, and thereupon shall call a general meeting of the company for the purpose of laying before it the account, and giving any explanation thereof.

(2) The meeting shall be called by advertisement in *The Gazette*, specifying the time, place, and object thereof, and published one month at least before the meeting.

(3) Within one week after the meeting the liquidator shall send to the registrar of companies a copy of the account, and shall make a return to him of the holding of the meeting and of its date, and if the copy is not sent or the return is not made in accordance with this sub-section the liquidator shall be liable to a fine not exceeding five pounds for every day during which the default continues:

Provided that, if a quorum is not present at the meeting, the liquidator shall, in lieu of the return hereinbefore mentioned, make a return that the meeting was duly summoned and that no quorum was present thereat, and upon such a return being made the provisions of this sub-section as to the making of the return shall be deemed to have been complied with.

(4) The registrar on receiving the account and either of the returns hereinbefore mentioned shall forthwith register them, and on the expiration of three months from the registration of the return the company shall be deemed to be dissolved:

Provided that the court may, on the application of the liquidator or of any other person who appears to the court to be interested, make an order deferring the date at which the dissolution of the company is to take effect for such time as the court thinks fit.

(5) It shall be the duty of the person on whose application an order of the court under this section is made, within seven days after the making of the order, to deliver to the registrar an office copy of the order for registration, and if that person fails so to do he shall be liable to a fine not exceeding five pounds for every day during which the default continues.

Provisions applicable to a Creditors' Voluntary Winding Up.

237.—The provisions contained in the eight sections of this Act next following shall apply in relation to a creditors' voluntary winding up.

238.—(1) The company shall cause a meeting of the creditors of the company to be summoned for the day, or the day next

following the day, on which there is to be held the meeting at which the resolution for voluntary winding up is to be proposed, and shall cause the notices of the said meeting of creditors to be sent by post to the creditors simultaneously with the sending of the notices of the said meeting of the company.

(2) The company shall cause notice of the meeting of the creditors to be advertised once in *The Gazette* and once at least in two local newspapers circulating in the district where the registered office or principal place of business of the company is situate.

(3) The directors of the company shall—

(a) cause a full statement of the position of the company's affairs together with a list of the creditors of the company and the estimated amount of their claims to be laid before the meeting of creditors to be held as aforesaid ; and

(b) appoint one of their number to preside at the said meeting.

(4) It shall be the duty of the director appointed to preside at the meeting of creditors to attend the meeting and preside thereat.

(5) If the meeting of the company at which the resolution for voluntary winding up is to be proposed is adjourned and the resolution is passed at an adjourned meeting, any resolution passed at the meeting of the creditors held in pursuance of sub-section (1) of this section shall have effect as if it had been passed immediately after the passing of the resolution for winding up the company.

(6) If default is made—

(a) by the company in complying with sub-sections (1) and (2) of this section ;

(b) by the directors of the company in complying with sub-section (3) of this section ;

(c) by any director of the company in complying with sub-section (4) of this section ;

the company, directors or director, as the case may be, shall be liable to a fine not exceeding one hundred pounds, and, in the case of default by the company, every officer of the company who is in default shall be liable to the like penalty.

239.—The creditors and the company at their respective meetings mentioned in the last foregoing section of this Act may nominate a person to be liquidator for the purpose of winding up the affairs and distributing the assets of the company, and if the creditors and the company nominate different persons, the person nominated by the creditors shall be liquidator, and if no person is nominated by the creditors the person, if any, nominated by the company shall be liquidator.

Provided that in the case of different persons being nominated any director, member, or creditor of the company may, within

seven days after the date on which the nomination was made by the creditors, apply to the court for an order either directing that the person nominated as liquidator by the company shall be liquidator instead of or jointly with the person nominated by the creditors, or appointing some other person to be liquidator instead of the person appointed by the creditors.

240.—(1) The creditors at the meeting to be held in pursuance of section two hundred and thirty-eight of this Act or at any subsequent meeting, may, if they think fit, appoint a committee of inspection consisting of not more than five persons, and if such a committee is appointed the company may, either at the meeting at which the resolution for voluntary winding up is passed or at any time subsequently in general meeting, appoint such number of persons as they think fit to act as members of the committee not exceeding five in number.

Provided that the creditors may, if they think fit, resolve that all or any of the persons so appointed by the company ought not to be members of the committee of inspection, and, if the creditors so resolve, the persons mentioned in the resolution shall not, unless the court otherwise directs, be qualified to act as members of the committee, and on any application to the court under this provision the court may, if it thinks fit, appoint other persons to act as such members in place of the persons mentioned in the resolution.

(2) Subject to the provisions of this section and to general rules, the provisions of sections one hundred and ninety-nine (except sub-section (1)) and two hundred and one of this Act shall apply with respect to a committee of inspection appointed under this section as they apply with respect to a committee of inspection appointed in a winding up by the court.

241.—(1) The committee of inspection, or if there is no such committee, the creditors, may fix the remuneration to be paid to the liquidator or liquidators.

(2) On the appointment of a liquidator, all the powers of the directors shall cease, except so far as the committee of inspection, or if there is no such committee, the creditors, sanction the continuance thereof.

242.—If a vacancy occurs, by death, resignation or otherwise, in the office of a liquidator, other than a liquidator appointed by, or by the direction of, the court, the creditors may fill the vacancy.

243.—The provisions of section two hundred and thirty-four of this Act shall apply in the case of a creditors' voluntary winding up as in the case of a members' voluntary winding up, with the modification that the powers of the liquidator under the said section shall not be exercised except with the sanction either of the court or of the committee of inspection.

244.—(1) In the event of the winding up continuing for more than one year, the liquidator shall summon a general meeting of

the company and a meeting of creditors at the end of the first year from the commencement of the winding up, and of each succeeding year, or as soon thereafter as may be convenient, and shall lay before the meetings an account of his acts and dealings and of the conduct of the winding up during the preceding year.

(2) If the liquidator fails to comply with this section, he shall be liable to a fine not exceeding ten pounds.

245.—(1) As soon as the affairs of the company are fully wound up, the liquidator shall make up an account of the winding up, showing how the winding up has been conducted and the property of the company has been disposed of, and thereupon shall call a general meeting of the company and a meeting of the creditors, for the purpose of laying the account before the meetings, and giving any explanation thereof.

(2) Each such meeting shall be called by advertisement in *The Gazette*, specifying the time, place, and object thereof, and published one month at least before the meeting.

(3) Within one week after the date of the meetings, or, if the meetings are not held on the same date, after the date of the later meeting, the liquidator shall send to the registrar of companies a copy of the account, and shall make a return to him of the holding of the meetings and of their dates, and if the copy is not sent or the return is not made in accordance with this sub-section the liquidator shall be liable to a fine not exceeding five pounds for every day during which the default continues :

Provided that, if a quorum is not present at either such meeting the liquidator shall, in lieu of the return hereinbefore mentioned, make a return that the meeting was duly summoned and that no quorum was present thereat, and upon such a return being made the provisions of this sub-section as to the making of the return, shall, in respect of that meeting, be deemed to have been complied with.

(4) The registrar on receiving the account and in respect of each such meeting either of the returns hereinbefore mentioned shall forthwith register them, and on the expiration of three months from the registration thereof the company shall be deemed to be dissolved :

Provided that the court may, on the application of the liquidator or of any other person who appears to the court to be interested, make an order deferring the date at which the dissolution of the company is to take effect for such time as the court thinks fit.

(5) It shall be the duty of the person on whose application an order of the court under this section is made, within seven days after the making of the order, to deliver to the registrar an office copy of the order for registration, and if that person fails so to do he shall be liable to a fine not exceeding five pounds for every day during which the default continues.

As to frauds and offences by officers of companies which have gone into liquidation see Sections 271 and 273 of the Act.

Voluntary winding up is commonly begun by an extraordinary resolution (see *ante*, p. 209) or by a special resolution (see *ante*, p. 213). An extraordinary resolution is sufficient when a company decides that it cannot by reason of its liabilities continue its business. A special resolution is necessary in all other cases (except the one stated in Section 225, Sub-section (1) (a), *ante*, p. 254, where an ordinary resolution is sufficient), and having passed a special resolution a company may be wound up for any reason, even though it be prosperous. The notice convening the meeting must be properly authorised—usually by the board—and if not properly authorised may be ratified subsequently by the board; as to the law and practice relating to notice of meetings, see *ante*, pp. 166-179. A record of posting the notices should be kept by the secretary in case of a subsequent affidavit as to posting should be required. For forms of notices, resolutions, minutes, etc., see *post*, pp. 349-359.

In giving notice of an extraordinary resolution care should be taken to comply with the statutory requirement, *i.e.* the notice must specify the intention to propose the resolution as an extraordinary resolution (see *ante*, p. 211). The resolution after the formal parts includes the proposed resolution “that the company be wound up voluntarily, and that X of — be appointed liquidator for the purposes of the winding up” in accordance with Section 232, Sub-section (i), which provides: “The company in general meeting shall appoint one or more liquidators for the purpose of winding up the affairs and distributing the assets of the company, and may fix the remuneration to be paid to him or them.” By Section 241, in a voluntary winding up to which that section applies, the power of the general meeting to appoint liquidators shall not apply; and the liquidator’s remuneration is to be fixed by the committee of inspection, or if there be none by the creditors.

Notice was given of resolutions for a voluntary winding up, the appointment of a liquidator, and reconstruction. At the meeting the only resolution put was for the voluntary

winding up of the company, and the appointment of a liquidator (dropping the reconstruction) which was subsequently confirmed. It was held that no valid resolutions for a voluntary winding up had ever been passed (*re Teede & Bishop*, 1901, 70 L. J. Ch. 409).

A resolution for a voluntary winding up is not invalid by reason of its being passed contemporaneously and in concert with resolutions for a reconstruction scheme which are held to be invalid (*Thomson v. Henderson's Transvaal Estates*, 1908, 1 Ch. 765).

The remuneration of the liquidator is often fixed at the time of his appointment, but it need not be.

At the meeting the appropriate resolution, of which proper notice in accordance with the articles has been given, is discussed and put to the meeting for its decision. At first the question is determined by a show of hands, proxies not being counted, but if a poll is demanded in accordance with Section 117, Sub-sections (4) and (5) (see *ante*, p. 211), proxies are counted. The method of taking a poll is governed by the articles; it is usually desirable to appoint scrutineers, and special care should be taken that the proxy paper is in proper form in accordance with the articles and duly stamped, and that the proxy is competent to vote (see *ante*, p. 231).

A voluntary winding up is deemed to commence at the time of the passing of the resolution authorising the winding up (Section 227). When a company is wound up voluntarily it ceases from the commencement of the winding up to carry on its business, except so far as may be required for the beneficial winding up thereof, but the corporate state and powers of the company continue until it is dissolved (Section 228).

When a company has resolved to wind up voluntarily, it must give notice of the resolution by advertisement in *The Gazette*. Section 226 provides: (1) "When a company has passed a resolution for voluntary winding up, it shall, within seven days after the passing of the resolution, give notice of the resolution by advertisement in *The Gazette*. (2) If default is made in complying with this section, the company

and every officer of the company who is in default shall be liable to a default fine, and for the purposes of this sub-section the liquidator of the company shall be deemed to be an officer of the company." The copy of the resolution for insertion in *The Gazette* must be signed by the chairman of the meeting at which the extraordinary resolution was passed and the signature of a solicitor appended. A printed copy of the resolution is also required to be given to the registrar (Section 118, Sub-section (1), *ante*, p. 213), and a notice of the liquidator's appointment must be filed.

It is undesirable that the receiver for debenture holders should be appointed one of two joint liquidators of a company. The creditors of a private company at meetings held previous to the liquidation of the company desired that the company should go into voluntary liquidation, and that K. and M. should be appointed joint liquidators. H. had already been appointed receiver and manager for the debenture holders in a debenture holders' action. The company passed a resolution for voluntary winding up, and appointed K. and H. to be joint liquidators. Subsequently the statutory meeting of the creditors was held, and the creditors applied to the Court that H. might be removed from his office of liquidator and M. appointed in his place to act jointly with K., which was granted (*re Karamelli & Barnet*, 1917, 1 Ch. 203).

Any arrangement between a company being wound up voluntarily and its creditors will be binding on the company if sanctioned by an extraordinary resolution, and on the creditors if acceded to by three-fourths in number and value of them. Any creditor or contributory may, however, appeal to the Court within three weeks from the completion of the arrangement (Section 251).

The liquidator may summon general meetings of the company for the purpose of obtaining the sanction of the company by special or extraordinary resolution or for any other purpose he may think fit (Section 248, Sub-section (1) (e)).

The Court may defer the date at which the dissolution is to take effect (Sections 236 and 245).

In both voluntary and compulsory winding up provision is made for consulting creditors who are interested in the assets if the company is solvent and the creditors who are likewise interested in the assets if the company is insolvent.

Section 288 provides :—

(1) The court may, as to all matters relating to the winding up of a company, have regard to the wishes of the creditors or contributories, as proved to it by any sufficient evidence, and may, if it thinks fit, for the purpose of ascertaining those wishes, direct meetings of the creditors or contributories to be called, held, and conducted in such manner as the court directs, and may appoint a person to act as chairman of any such meeting and to report the result thereof to the court.

(2) In the case of creditors, regard shall be had to the value of each creditor's debt.

(3) In the case of contributories, regard shall be had to the number of votes conferred on each contributory by this Act or the articles.

If the company is insolvent, the contributories have no interest and small regard is had to their wishes (*re* Isle of Wight Ferry Co., 1864, 2 H. & M. 597, and see *re* Bishop & Sons, 1900, 2 Ch. 254).

By rule 58 the Court may direct meetings to be held to determine whether an application shall be made for the appointment of a liquidator in place of one who has been removed for failing to give or keep up his security. Rule 165 also provides for meetings to appoint a new liquidator on the resignation of the old.

The Court has power to order the first meetings of creditors and contributories to be re-summoned, and it may limit the purposes of the meeting to the selection of persons to be appointed as members of the committee of inspection (*re* Radford & Bright (No. 2), 1901, 1 Ch. 735).

Apparently if the existing committee of inspection does not act in harmony with the new liquidator appointed on behalf of the creditors, the Court will have jurisdiction to remove them by the indirect method suggested in *re* Radford & Bright (No. 2), *supra*, by re-summoning the first meeting of creditors and contributories and then appointing the creditors' nominees (*re* Rubber & Produce Investment Trust, 1915, 1 Ch. 382), and see *re* Charles Reynolds & Co. (1915, W. N. 31).

STATUTORY RULES

Section 305 (1) of the Act provides :—

(1) The Lord Chancellor may, with the concurrence of the President of the Board of Trade, make general rules for carrying into effect the objects of this Act so far as relates to the winding up of companies in England, and the Court of Session may by Act of Sederunt make general rules for carrying into effect the objects of this Act so far as relates to the winding up of companies in Scotland.

See winding up rules, 1929, S. R. & O. 1929, No. 612/L.16.

WINDING UP BY THE COURT

A company may be wound up by the Court, *inter alia*, when it has passed a special resolution to wind up (Section 168). A winding-up petition shall not, if the ground of the petition is default in delivering the statutory report to the registrar or in holding the statutory meeting, be presented by any person except a shareholder, nor before the expiration of fourteen days after the last day on which the meeting ought to have been held (Section 170 (1) (b)). Where before the presentation of a petition for the winding up of a company by the Court a resolution has been passed for the voluntary winding up, the winding up shall be deemed to have commenced at the time of the passing of the resolution; in any other case the winding up shall be deemed to commence at the time of the presentation of the petition (Section 175).

As to special resolutions see Section 117, Sub-section (2), *ante*, p. 213.

As regards consulting the wishes of creditors and contributories see Section 288, *ante*, p. 264.

The liquidator is appointed by the Court (Section 183); any vacancy is also filled by the Court (Section 188 (3)).

Section 185 provides :—

(1) The official receiver shall by virtue of his office become the provisional liquidator and shall continue to act as such until he or another person becomes liquidator and is capable of acting as such.

(2) The official receiver shall summon separate meetings of the creditors and contributories of the company for the purpose of determining whether or not an application is to be made to the Court for appointing a liquidator in the place of the official receiver.

(3) The Court may make any appointment and order required to give effect to any such determination, and, if there is a difference between the determination of the meetings of the creditors and contributories in respect of the matter aforesaid, the Court shall decide the difference and make such order thereon as the Court may think fit.

(4) In a case where a liquidator is not appointed by the Court, the official receiver shall be the liquidator of the company.

(5) The official receiver shall by virtue of his office be the liquidator during any vacancy.

(6) A liquidator shall be described where a person other than the official receiver is liquidator, by the style of "the liquidator," and, where the official receiver is liquidator, by the style of "the official receiver and liquidator," of the particular company in respect of which he is appointed, and not by his individual name.

APPOINTMENT OF LIQUIDATOR IN A WINDING UP BY THE COURT

Rule 56 provides :—

(1) As soon as possible after the first meetings of creditors and contributories have been held the official receiver, or the chairman of the meeting, as the case may be, shall report the result of each meeting to the Court.

(2) Upon the result of the meetings of creditors and contributories being reported to the Court, if there is a difference between the determinations of the meetings of the creditors and contributories, the Court shall, on the application of the official receiver, fix a time and place for considering the resolutions and determinations (if any) of the meetings, deciding differences, and making such order as shall be necessary. In any other case the Court may upon the application of the official receiver forthwith make any appointment necessary for giving effect to any such resolutions or determinations.

(3) When a time and place have been fixed for the consideration of the resolutions and determinations of the meetings, such time and place shall be advertised by the official receiver in such manner as the Court shall direct, but so that the first or only advertisement shall be published not less than seven days before the time so fixed.

(4) Upon the consideration of the resolutions and determinations of the meetings the Court shall hear the official receiver and any creditor or contributory.

(5) If a liquidator is appointed, a copy of the order appointing him shall be transmitted to the Board of Trade by the official receiver, and the Board of Trade shall, as soon as the liquidator has given security, cause notice of the appointment to be gazetted. The expense of gazetting the notice of the appointment shall be paid by the liquidator, but may be charged by him on the assets of the company.

(6) Every appointment of a liquidator or committee of inspection shall be advertised by the liquidator in such manner as the Court directs immediately after the appointment has been made, and the liquidator has given the required security.

(7) If a liquidator in a winding up by the Court shall die, or resign, or be removed, another liquidator may be appointed in his place in the same manner as in the case of a first appointment, and the official receiver shall, on the request of not less than one-tenth in value of the creditors or contributories summon meetings for the purpose of determining whether or not the vacancy shall be filled ; but none of the provisions of this Rule shall apply where the liquidator is released under section 197 of the Act, in which case the official receiver shall remain liquidator.

CALLS

Rule 84 provides :—

The powers and duties of the Court in relation to making calls upon contributories conferred by section 206 of the Act, shall and may be exercised, in a winding up by the Court, by the liquidator as an officer of the Court subject to the proviso to section 220 of the Act, and to the following regulations :—

(1) Where the liquidator desires to make any call on the contributories, or any of them for any purpose authorised by the Act, if there is a committee of inspection he may summon a meeting of such committee for the purpose of obtaining their sanction to the intended call.

(2) The notice of the meeting shall be sent to each member of the committee of inspection in sufficient time to reach him not less than seven days before the day appointed for holding the meeting and shall contain a statement of the proposed amount of the call, and the purpose for which it is intended. Notice of the intended call and the intended meeting of the committee of inspection shall also be advertised once at least in a London newspaper, or, where the winding up is not in the High Court, in a newspaper circulating in the district of the Court in which the proceedings are pending. The advertisement shall state the time and place of the intended meeting of the committee of inspection, and that each contributory may either attend the said meeting and be heard, or make any communication in writing to the liquidator or members of the

committee of inspection to be laid before the meeting, in reference to the said intended call.

(3) At the meeting of the committee of inspection any statements or representations made either to the meeting personally or addressed in writing to the liquidator or members of the committee by any contributory shall be considered before the intended call is sanctioned.

(4) The sanction of the committee shall be given by resolution, which shall be passed by a majority of the members present.

(5) Where there is no committee of inspection, the liquidator shall not make a call without obtaining the leave of the Court.

GENERAL MEETINGS OF CREDITORS AND CONTRIBUTORIES IN RELATION TO A WINDING UP BY THE COURT

Rules 119 to 154 provide :—

119. Unless the Court otherwise directs, the meetings of creditors and contributories under Section 185 of the Act (hereinafter referred to as the first meetings of creditors and contributories) shall be held within one month or if a special manager has been appointed, then within six weeks after the date of the winding-up order. The dates of such meetings shall be fixed and they shall be summoned by the official receiver.

120. The official receiver shall forthwith give notice of the dates fixed by him for the first meetings of creditors and contributories to the Board of Trade, who shall gazette the same.

121. The first meetings of creditors and contributories shall be summoned as hereinafter provided.

122. The notices of first meetings of creditors and contributories may be in Forms 71 and 72 appended thereto, and the notices to creditors shall state a time within which the creditors must lodge their proofs in order to entitle them to vote at the first meeting.

123. The official receiver shall also give to each of the directors and other officers of the company who in his opinion ought to attend the first meetings of creditors and contributories seven days' notice of the time and place appointed for each meeting. The notice may either be delivered personally or sent by prepaid letter post, as may be convenient. It shall be the duty of every director or officer who receives notice of such meeting to attend if so required by the official receiver, and if any such director or officer fails to attend the official receiver shall report such failure to the Court.

124.—(1) The official receiver shall also, as soon as practicable, send to each creditor mentioned in the company's statement of affairs, and to each person appearing from the company's books

or otherwise to be a contributory of the company a summary of the company's statement of affairs, including the causes of its failure and any observations thereon which the official receiver may think fit to make. The proceedings at a meeting shall not be invalidated by reason of any summary or notice required by these rules not having been sent or received before the meeting.

(2) Where prior to the winding-up order the company has commenced to be wound up voluntarily the official receiver may, if in his absolute discretion he sees fit so to do, send to the persons aforesaid or any of them an account of such voluntary winding up showing how such winding up has been conducted and how the property of the company has been disposed of and any observations which the official receiver may think fit to make on such account or on the voluntary winding up.

GENERAL MEETINGS OF CREDITORS AND CONTRIBUTORIES IN RELATION TO WINDING UP BY THE COURT AND OF CREDITORS IN RELATION TO A CREDITORS' VOLUNTARY WINDING UP

125.—(1) In addition to the first meetings of creditors and contributories and in addition also to meetings of creditors and contributories directed to be held by the Court under Section 288 of the Act (hereinafter referred to as Court meetings of creditors and contributories), the liquidator in any winding up by the Court may himself from time to time subject to the provisions of the Act and the control of the Court summon, hold and conduct meetings of the creditors or contributories (hereinafter referred to as liquidator's meetings of creditors and contributories) for the purpose of ascertaining their wishes in all matters relating to the winding up.

(2) In any creditors' voluntary winding up the liquidator may himself from time to time summon, hold and conduct meetings of creditors for the purpose of ascertaining their wishes in all matters relating to the winding up (such meetings and all meetings of creditors which a liquidator or a company is by the Act required to convene in or immediately before such a voluntary winding up and all meetings convened by a creditor in a voluntary winding up under these rules are hereinafter called voluntary liquidation meetings).

126. Except where and so far as the nature of the subject-matter or the context may otherwise require, the rules as to meetings hereinafter set out shall apply to first meetings, Court meetings, liquidator's meetings of creditors and contributories, and voluntary liquidation meetings, but so nevertheless that the said rules shall take effect as to first meetings subject and without prejudice to any express provisions of the Act and as to Court meetings subject and without prejudice to any express directions of the Court.

127.—(1) The official receiver or liquidator shall summon all meetings of creditors and contributories by giving not less than seven days' notice of the time and place thereof in the *London Gazette* and in a local paper; and shall not less than seven days before the day appointed for the meeting send by post to every person appearing by the company's books to be a creditor of the company notice of the meeting of creditors, and to every person appearing by the company's books or otherwise to be a contributory of the company notice of the meeting of contributories.

[i.e. seven clear days.]

(2) The notice to each creditor shall be sent to the address given in his proof or if he has not proved to the address given in the statement of affairs of the company, if any, or to such other address as may be known to the person summoning the meeting. The notice to each contributory shall be sent to the address mentioned in the company's books as the address of such contributory, or to such other address as may be known to the person summoning the meeting.

(3) In the case of meetings under Section 242 of the Act the continuing liquidator or if there is no continuing liquidator any creditor may summon the meeting.

(4) This rule shall not apply to meetings under Section 238 or Section 245 of the Act.

128. A certificate by the official receiver or other officer of the Court, or by the clerk of any such person, or an affidavit by the liquidator, or creditor, or his solicitor, or the clerk of either of such persons, or as the case may be by some officer of the company or its solicitor or the clerk of such company or solicitor, that the notice of any meeting has been duly posted, shall be sufficient evidence of such notice having been duly sent to the person to whom the same was addressed.

129. Every meeting shall be held at such place as is in the opinion of the person convening the same most convenient for the majority of the creditors or contributories or both. Different times or places or both may if thought expedient be named for the meetings of creditors and for the meetings of contributories.

130. The costs of summoning a meeting of creditors or contributories at the instance of any person other than the official receiver or liquidator shall be paid by the person at whose instance it is summoned who shall before the meeting is summoned deposit with the official receiver or liquidator (as the case may be) such sum as may be required by the official receiver or liquidator as security for the payment of such costs. The costs of summoning such meeting of creditors or contributories, including all disbursements for printing, stationery, postage and the hire of room, shall be calculated at the following rate for each creditor or contributory to whom notice is required to be sent, namely, two shillings per creditor or contributory for the first 20 creditors or contributories, one shilling per

creditor or contributory for the next 30 creditors or contributories, sixpence per creditor or contributory for any number of creditors or contributories after the first 50. The said costs shall be repaid out of the assets of the company if the Court shall by order or if the creditors or contributories (as the case may be) shall by resolution so direct. This rule shall not apply to meetings under Sections 238 or 242 of the Act.

131. Where a meeting is summoned by the official receiver or the liquidator, he or someone nominated by him shall be chairman of the meeting. At every other meeting of creditors or contributories the chairman shall be such person as the meeting by resolution shall appoint. This rule shall not apply to meetings under Section 238 of the Act.

132. At a meeting of creditors a resolution shall be deemed to be passed when a majority in number and value of the creditors present personally or by proxy and voting on the resolution have voted in favour of the resolution, and at a meeting of the contributories a resolution shall be deemed to be passed when a majority in number and value of the contributories present personally or by proxy, and voting on the resolution, have voted in favour of the resolution, the value of the contributories being determined according to the number of votes conferred on each contributory by the regulations of the company.

[If the majority in value differs from the majority in number there is no resolution, but the Court inclines to the view of the majority in value (*re Bloxwich Iron & Steel Co.*, 1894, W. N. 111).]

133. The official receiver or as the case may be the liquidator shall file with the registrar a copy certified by him of every resolution of a meeting of creditors or contributories in a winding up by the Court.

134. Where a meeting of creditors or contributories is summoned by notice the proceedings and resolutions at the meeting shall unless the Court otherwise orders be valid notwithstanding that some creditors or contributories may not have received the notice sent to them.

135. The chairman may with the consent of the meeting adjourn it from time to time and from place to place, but the adjourned meeting shall be held at the same place as the original meeting unless in the resolution for adjournment another place is specified or unless the Court otherwise orders.

136.—(1) A meeting may not act for any purpose except the election of a chairman, the proving of debts and the adjournment of the meeting unless there are present or represented thereat at least three creditors entitled to vote or three contributories or all the creditors entitled to vote or all the contributories if the number of creditors entitled to vote or the contributories as the case may be shall not exceed three.

(2) If within half an hour from the time appointed for the meeting a quorum of creditors or contributories is not present or represented the meeting shall be adjourned to the same day in the following week at the same time and place or to such other day or time or place as the chairman may appoint but so that the day appointed shall be not less than seven or more than twenty-one days from the day from which the meeting was adjourned.

[Where an important creditor has not been represented a fresh meeting may be called (*re* Radford & Bright, 1901, 1 Ch. 272).]

137. In the case of a first meeting of creditors or of an adjournment thereof a person shall not be entitled to vote as a creditor unless he has duly lodged with the official receiver not later than the time mentioned for that purpose in the notice convening the meeting or adjourned meeting a proof of the debt which he claims to be due to him from the company. In the case of a Court meeting or liquidator's meeting of creditors a person shall not be entitled to vote as a creditor unless he has lodged with the official receiver or liquidator a proof of the debt which he claims to be due to him from the company and such proof has been admitted wholly or in part before the date on which the meeting is held. Provided that this and the next four following rules shall not apply to a Court meeting of creditors held prior to the first meeting of creditors. This rule shall not apply to any creditors or class of creditors who by virtue of the rules or any directions given thereunder are not required to prove their debts or to any voluntary liquidation meeting.

138. A creditor shall not vote in respect of any unliquidated or contingent debt, or any debt the value of which is not ascertained, nor shall a creditor vote in respect of any debt on or secured by a current bill of exchange or promissory note held by him unless he is willing to treat the liability to him thereon of every person who is liable thereon antecedently to the company, and against whom a receiving order in bankruptcy has not been made, as a security in his hands, and to estimate the value thereof, and for the purposes of voting, but not for the purposes of dividend, to deduct it from his proof.

[A debt the value of which cannot be ascertained means one dependent on the happening of some future event (*re* Dummelow, 1873, L.R., 8 Ch. 997). The bill of exchange must be produced, Rule 102.]

139. For the purpose of voting, a secured creditor shall, unless he surrenders his security, state in his proof or in a voluntary liquidation in such a statement as is hereinafter mentioned the particulars of his security, the date when it was given, and the value at which he assesses it, and shall be entitled to vote only in respect of the balance (if any) due to him after deducting the value of his security. If he votes in respect of his whole debt he shall be deemed to have surrendered his security, unless the Court on application is

satisfied that the omission to value the security has arisen from inadvertence.

[As to this proviso a mistake as to value is not inadvertence nor where there has been deliberate election (*re Piers*, 1898, 1 Q.B. 627), and see *re Rubber & Produce Investment Trust* (1915, 1 Ch. 382, *re Charles Reynolds & Co.*, 1895, W. N. 31).]

140. The official receiver or liquidator may within twenty-eight days after a proof or in a voluntary liquidation a statement estimating the value of a security as aforesaid has been used in voting at a meeting require the creditor to give up the security for the benefit of the creditors generally on payment of the value so estimated with an addition thereto of 20 per cent. Provided that where a creditor has valued his security he may at any time before being required to give it up correct the valuation by a new proof and deduct the new value from his debt, but in that case the said addition of 20 per cent. shall not be made if the security is required to be given up.

141. The chairman shall have power to admit or reject a proof for the purpose of voting, but his decision shall be subject to appeal to the Court. If he is in doubt whether a proof shall be admitted or rejected he shall mark it as objected to and allow the creditor to vote subject to the vote being declared invalid in the event of the objection being sustained.

[By rule 14 of the First Schedule to the Bankruptcy Act, 1914, "The chairman of a meeting [of creditors] shall have power to admit or reject a proof for the purpose of voting." Under this rule the chairman of each meeting has power to admit or reject a proof for the purpose of voting and he is not bound by the decision of the chairman of the first meeting (*re Potts*, 1934, 50 T. L. R. 193).]

142. For the purpose of voting at any voluntary liquidation meetings a secured creditor shall unless he surrender his security lodge with the liquidator or where there is no liquidator at the registered office of the company before the meeting a statement giving the particulars of his security, the date when it was given and the value at which he assesses it.

143.—(1) The chairman shall cause minutes of the proceedings at the meeting to be drawn up and fairly entered in a book kept for that purpose and the minutes shall be signed by him or by the chairman of the next ensuing meeting.

[These minutes are the only proper record of proceedings (*re Radcliffe*, 1875, L.R., 10 Ch. 631).]

(2) A list of creditors and contributories present at every meeting shall be made and kept as in Form 74.

PROXIES IN RELATION TO A WINDING UP BY THE COURT AND TO MEETINGS OF CREDITORS IN A CREDITORS' VOLUNTARY WINDING UP.

144. A creditor or a contributory may vote either in person or by proxy. Where a person is authorised in manner provided by

Section 116 of the Act to represent a corporation at any meeting of creditors or contributories such person shall produce to the official receiver or liquidator or other the chairman of the meeting a copy of the resolution so authorising him. Such copy must either be under the seal of the corporation or must be certified to be a true copy by the secretary or a director of the corporation. The succeeding rules as to proxies shall not (unless otherwise directed by the Court) apply to a Court meeting of creditors or contributories prior to the first meeting.

[A creditor who has assigned his debt after proof can still vote (*re* Baum, 1880, 13 Ch. D. 424).]

145. Every instrument of proxy shall be in accordance with the form in the Appendix and every written part thereof shall be in the handwriting of the person giving the proxy or of any manager or clerk or other person in his regular employment or of a commissioner to administer oaths in the Supreme Court.

146. General and special forms of proxy shall be sent to the creditors and contributories with the notice summoning the meeting, and neither the name nor description of the official receiver or liquidator or any other person shall be printed or inserted in the body of any instrument of proxy before it is so sent.

147. A creditor or a contributory may give a general proxy to any person.

148. A creditor or a contributory may give a special proxy to any person to vote at any specified meeting or adjournment thereof:—

- (a) for or against the appointment or continuance in office of any specified person as liquidator or member of the committee of inspection, and ;
- (b) on all questions relating to any matter other than those above referred to and arising at the meeting or an adjournment thereof.

149. Where it appears to the satisfaction of the Court that any solicitation has been used by or on behalf of a liquidator in obtaining proxies or in procuring his appointment as liquidator except by the direction of a meeting of creditors or contributories, the Court if it thinks fit may order that no remuneration be allowed to the person by whom or on whose behalf the solicitation was exercised notwithstanding any resolution of the committee of inspection or of the creditors or contributories to the contrary.

150. A creditor or a contributory in a winding up by the Court may appoint the official receiver or liquidator and in a voluntary winding up the liquidator or if there is no liquidator the chairman of a meeting to act as his general or special proxy.

151. No person acting either under a general or a special proxy shall vote in favour of any resolution which would directly or in-

directly place himself, his partner or employer in a position to receive any remuneration out of the estate of the company otherwise than as a creditor rateably with the other creditors of the company : Provided that where any person holds special proxies to vote for an application to the Court in favour of the appointment of himself as liquidator he may use the said proxies and vote accordingly.

152.—(1) A proxy intended to be used at the first meeting of creditors or contributories, or an adjournment thereof, shall be lodged with the official receiver not later than the time mentioned for that purpose in the notice convening the meeting or the adjourned meeting, which time shall be not earlier than twelve o'clock at noon of the day but one before, nor later than twelve o'clock at noon of the day before the day appointed for such meeting, unless the Court otherwise directs.

(2) In every other case a proxy shall be lodged with the official receiver or liquidator in a winding up by the Court, with the company at its registered office for a meeting under Section 238 of the Act, and with the liquidator or if there is no liquidator with the person named in the notice convening the meeting to receive the same in a voluntary winding up not later than four o'clock in the afternoon of the day before the meeting or adjourned meeting at which it is to be used.

(3) No person shall be appointed a general or special proxy who is a minor.

153. Where an official receiver who holds any proxies cannot attend the meeting for which they are given, he may, in writing, depute some person under his official control to use the proxies on his behalf and in such manner as he may direct.

154. The proxy of a creditor blind or incapable of writing may be accepted, if such creditor has attached his signature or mark thereto in the presence of a witness, who shall add to his signature his description and residence ; provided that all insertions in the proxy are in the handwriting of the witness, and such witness shall have certified at the foot of the proxy that all such insertions have been made by him at the request and in the presence of the creditor before he attached his signature or mark.

Section 192 provides :—

(1) Subject to the provisions of this Act, the liquidator of a company which is being wound up by the Court in England shall, in the administration of the assets of the company and in the distribution thereof among its creditors, have regard to any directions that may be given by resolution of the creditors or contributories at any general meeting, or by the committee of inspection, and any directions given by the creditors or contributories at any general meeting shall in case of conflict be deemed to override any directions given by the committee of inspection.

(2) The liquidator may summon general meetings of the creditors or contributories for the purpose of ascertaining their wishes, and it shall be his duty to summon meetings at such times as the creditors or contributories, by resolution, either at the meeting appointing the liquidator or otherwise, may direct, or whenever requested in writing to do so by one-tenth in value of the creditors or contributories as the case may be.

It is the duty of a liquidator to convene meetings of creditors or contributories if he disagrees with the instructions of the committee of inspection (*re Consolidated Diesel Engine Manufacturers*, 1915, 1 Ch. 192).

Section 220 provides that general rules may be made for enabling any of the following powers and duties to be exercised or performed by the liquidator as an officer of, and subject to the control of, the Court : (a) holding meetings of creditors and contributories ; (b) settling lists of contributories, rectifying the register of members where required, and collecting and applying the assets ; (c) paying, delivery, conveyance, surrender, or transfer of money, property, or documents to the liquidator ; (d) making calls ; (e) fixing a time within which debts and claims must be proved. The liquidator cannot, however, without leave of the Court rectify the register, nor make any call without either the leave of the Court or the sanction of the committee of inspection.

As to statutory rules, relating to general meetings of creditors and contributories in relation to a winding up by the Court, see *ante*, p. 265.

COMMITTEES OF INSPECTION

By Section 198, meetings of creditors and contributories are to determine whether a committee of inspection shall be appointed.

Section 199 provides :—

(1) A committee of inspection appointed in pursuance of this Act shall consist of creditors and contributories of the company or persons holding general powers of attorney from creditors or contributories in such proportions as may be agreed on by the meetings of creditors and contributories, or as, in case of difference, may be determined by the Court :

Provided that, where in Scotland a winding up order has been

made on the ground that a company is unable to pay its debts, the committee shall consist of creditors or persons holding general powers of attorney from creditors.

(2) The committee shall meet at such times as they from time to time appoint, and, failing such appointment, at least once a month, and the liquidator or any member of the committee may also call a meeting of the committee as and when he thinks necessary.

(3) The committee may act by a majority of their members present at a meeting, but shall not act unless a majority of the committee are present.

(4) A member of the committee may resign by notice in writing signed by him and delivered to the liquidator.

(5) If a member of the committee becomes bankrupt, or compounds or arranges with his creditors, or is absent from five consecutive meetings of the committee without the leave of those members who together with himself represent the creditors or contributories, as the case may be, his office shall thereupon become vacant.

(6) A member of the committee may be removed by an ordinary resolution at a meeting of creditors, if he represents creditors, or of contributories, if he represents contributories, of which seven days' notice has been given, stating the object of the meeting.

(7) On a vacancy occurring in the committee the liquidator shall forthwith summon a meeting of creditors or of contributories, as the case may require, to fill the vacancy, and the meeting may, by resolution, reappoint the same or appoint another creditor or contributory to fill the vacancy.

(8) The continuing members of the committee, if not less than two, may act notwithstanding any vacancy in the committee.

Section 215 provides :—

In the winding up by the court of a company registered in Scotland, the court shall have power to require the attendance of any director or other officer of the company at any meeting of creditors or of contributories or of a committee of inspection for the purpose of giving information as to the trade, dealings, affairs or property of the company.

WINDING UP UNDER SUPERVISION

Section 256 provides :—

When a company has passed a resolution for voluntary winding up, the Court may make an order that the voluntary winding up shall continue but subject to such supervision of the Court, and with such liberty for creditors, contributories, or others to apply to the Court, and generally on such terms and conditions as the Court thinks just.

A supervision order merely continues the voluntary winding up, and accordingly the winding up in such cases commences "at the time of the passing of the resolution authorising the winding up" as provided by Section 227

Section 260 provides —

(1) Where an order is made for a winding up subject to supervision, the liquidator may, subject to any restrictions imposed by the Court, exercise all his powers, without the sanction or intervention of the Court, in the same manner as if the company were being wound up altogether voluntarily

(2) A winding up subject to the supervision of the Court is not a winding up by the Court for the purpose of the provisions of this Act which are set out in the Ninth Schedule to this Act, but, subject as aforesaid, an order for a winding up subject to supervision shall for all purposes be deemed to be an order for winding up by the Court

By Section 259 (2), a liquidator is to have the same powers as a liquidator appointed in a voluntary winding up, including the power to call general meetings given by Section 248 (*ante*, p 263)

As to the holding of meetings to ascertain the wishes of creditors or contributories, see Section 288, *ante*, p 264

The effect of the supervision order is the same as an order for compulsory winding up, except that the following sections of the Act, *inter alia*, do not apply Section 185 (2) (official receiver to summon meetings of creditors and contributories), and Section 192 (control of liquidator by the meetings of creditors)

PART III

MEETINGS OF LOCAL AUTHORITIES

CHAPTER XXIV

THE PARISH ; THE DISTRICT ; THE BOROUGH ;
AND THE COUNTY, IN THE PROVINCES *

THE general principles governing meetings as discussed in Part I hereof equally apply to meetings of local authorities except in so far as they are modified by statutory provisions, or by bylaws or standing orders which may be formulated by any particular local authority. The statutory provisions governing local authorities in the metropolis and outside London are given *in extenso* in the following chapters, but these provisions should be considered in conjunction with the bylaws or standing orders of the particular local authority concerned.

The Local Government Act, 1933, provides that in the case of meetings of local authorities notice shall be given of the business to be transacted, but standing orders frequently provide that certain motions may be made without notice, *e.g.* adjournment of a meeting, considering and dealing with correspondence, appointment of committees, and any matter that is urgent.

No provision for meetings being open to the public is made except in regard to parish councils. As to the admission of the Press, see Local Authorities (Admission of the Press to Meetings) Act, 1908, *post*, p. 331, and see *Mayor of Tenby v. Mason*, *ante*, p. 98.

As to the power of suspending a member of a local authority for obstruction or disorderly conduct, see *Barton v. Taylor*, *ante*, p. 98.

THE PROVINCES

The conduct and procedure at meetings of parish councils, district councils, borough councils, and county councils outside London are in the main governed and controlled by the Local Government Act, 1933,† which came into operation

See also the author's *The Law and Practice relating to Meetings of Local Authorities*, 2nd edition, 1934 (Gee & Co.).

† Hereafter referred to as the Act of 1933 ; where sections are noted they refer to that Act unless otherwise cited.

on June 1, 1934. In many cases this Act has repealed but re-enacted in substance or in principle many of the provisions of the Public Health Act, 1875, the Municipal Corporations Act, 1882, and the Local Government Acts of 1888 and 1894, which formerly governed meetings of local authorities.

Meetings and Proceedings.

S. 63.—*Vacation of office by failure to attend meetings, etc.*

(1) If a member of a local authority fails throughout a period of six consecutive months to attend any meeting of the local authority, he shall, unless the failure was due to some reason approved by the local authority, cease to be a member of the authority :

Provided that—

(a) attendance as a member at a meeting of any committee or sub-committee of the local authority, or at a meeting of any joint committee, joint board, or other body to which any of the functions of the local authority have been delegated or transferred, shall be deemed for the purposes of this subsection to be attendance at a meeting of the local authority ;

(b) a member of any branch of His Majesty's naval, military or air forces when employed during war or any emergency on any naval, military, or air force service, and a person whose employment in the service of His Majesty in connection with war or any emergency is such as, in the opinion of the Minister, to entitle him to relief from disqualification on account of absence, shall not cease to be a member of a local authority by reason only of failure to attend meetings of the local authority if the failure is due to that employment ;

(c) in relation to a member of a county council or of the council of a borough, the said period of six consecutive months must be a period of six consecutive months commencing

on or after the date of the commencement of this Act.

(2) If the mayor of a borough is continuously absent from the borough, except in the case of illness, for a period exceeding two months, he shall, as from the expiration of that period, cease to hold that office.

[See further as to absence from meetings, *ante*, p. 18.]

S. 75. *Meetings and proceedings of local authorities.*—The provisions of Parts I to V of the Third Schedule (see *post*) to this Act shall have effect as respects the meetings and proceedings of local authorities and of committees thereof :

Provided that a county councillor elected for an electoral division consisting wholly of a county district or of some part of a county district shall not vote on any matter involving only expenditure on account of which the county district is not, for the time being, liable to be charged.

S. 76.—(1) *Disability of members of authorities for voting on account of interest in contracts, &c.*—If a member of a local authority has any pecuniary interest, direct or indirect, in any contract or proposed contract or other matter, and is present at a meeting of the local authority at which the contract or other matter is the subject of consideration, he shall at the meeting, as soon as practicable after the commencement thereof, disclose the fact, and shall not take part in the consideration or discussion of, or vote on any question with respect to, the contract or other matter :

Provided that this section shall not apply to an interest in a contract or other matter which a member may have as a ratepayer or inhabitant of the area, or as an ordinary consumer of gas, electricity or water, or to an interest in any matter relating to the terms on which the right to participate in any service, including the supply of goods, is offered to the public.

(2) For the purposes of this section a person shall (subject as hereafter in this sub-section provided) be treated as having indirectly a pecuniary interest in a contract or other matter, if—

- (a) he or any nominee of his is a member of a company or other body with which the contract is made or is proposed to be made or which has a direct pecuniary interest in the other matter under consideration ; or
- (b) he is a partner, or is in the employment, of a person with whom the contract is made or is proposed to be made or who has a direct pecuniary interest in the other matter under consideration :

Provided that—

(i) this sub-section shall not apply to membership of, or employment under, any public body ;

(ii) a member of a company or other body shall not, by reason only of his membership, be treated as being so interested if he has no beneficial interest in any shares or stock of that company or other body.

(3) In the case of married persons living together the interest of one spouse shall, if known to the other, be deemed for the purposes of this section to be also an interest of that other spouse.

(4) A general notice given in writing to the clerk of the authority by a member thereof to the effect that he or his spouse is a member or in the employment of a specified company or other body, or that he or his spouse is a partner or in the employment of a specified person, shall, unless and until the notice is withdrawn, be deemed to be a sufficient disclosure of his interest in any contract, proposed contract or other matter relating to that company or other body or to that person which may be the subject of consideration after the date of the notice.

(5) The clerk of the authority shall record in a book to be kept for the purpose particulars of any disclosure made under sub-section (1) of this section, and of any notice given under sub-section (4) thereof, and the book shall be open at all reasonable hours to the inspection of any member of the local authority.

(6) If any person fails to comply with the provisions

of sub-section (1) of this section, he shall for each offence be liable on summary conviction to a fine not exceeding fifty pounds, unless he proves that he did not know that a contract, proposed contract, or other matter in which he had a pecuniary interest was the subject of consideration at the meeting.

(7) A prosecution for an offence under this section shall not be instituted except by or on behalf of the Director of Public Prosecutions.

(8) The county council, as respects a member of a parish council, and the Minister, as respects a member of any other local authority, may, subject to such conditions as the county council or the Minister, as the case may be, may think fit to impose, remove any disability imposed by this section in any case in which the number of members of the local authority so disabled at any one time would be so great a proportion of the whole as to impede the transaction of business, or in any other case in which it appears to the county council or the Minister, as the case may be, that it is in the interests of the inhabitants of the area that the disability should be removed.

(9) A local authority may by standing orders provide for the exclusion of a member of the authority from a meeting of the authority whilst any contract, proposed contract or other matter in which he has such an interest as aforesaid is under consideration.

[The House of Lords in *Lapish v. Braithwaite* (1926, A. C. 275) held that an alderman who was also a shareholder and managing director of companies having current contracts with the borough council, if he was paid by salary and not by commission, was not disqualified from being an alderman under Sections 12 and 14 of the Municipal Corporations Act, 1882 (see now Section 59 of the Act of 1933) as a person having a share or interest in any contract with the council. In *R. v. Hendon Rural Council* (1933, 2 K. B. 696), the Divisional Court held that a councillor who is interested in the development of a building site pending the approval of a town planning scheme may not vote thereon.]

SCHEDULE III, PART V

Provisions relating to Local Authorities generally

1.—(1) *Decision on questions.*—Subject to the provisions of any enactment (including any enactment in this Act) all acts of a local authority and all questions coming or arising before a local authority shall be done and decided by a majority of the members of the local authority present and voting thereon at a meeting of the local authority.

(2) In the case of an equality of votes the person presiding at the meeting shall have a second or a casting vote.

[The person presiding may therefore have an original vote on any matter.]

2. *Names of members present to be recorded.*—The names of the members present at a meeting of a local authority shall be recorded.

[This is a new provision as regards county and borough councils. Names of members can conveniently be recorded in the minutes of proceedings.]

3.—(1) *Minutes.*—Minutes of the proceedings of a meeting of a local authority, or of a committee thereof, shall be drawn up and entered in a book kept for that purpose, and shall be signed at the same or next ensuing meeting of the local authority or committee, as the case may be, by the person presiding thereat, and any minute purporting to be so signed shall be received in evidence without further proof.

[By section 283 of the Act of 1933, minutes are to be open to the inspection of any local government elector, on payment of a fee not exceeding 1s., who may also make a copy thereof or an extract therefrom. This also includes minutes of committees if they have been actually submitted to the council (*Williams v. Manchester Corporation*, 1897, 45 W. R. 412).]

[Minutes may be inspected by an agent of a local government elector (*R. v. Glamorgan C.C.*, 1936, All E. R. 168), following the principle of *R. v. Bedwellty U.D.C.* (1934, 1 K. B. 333), where it was held that the accounts of a local

authority may be inspected by an agent of the local government elector.]

(2) Until the contrary is proved, a meeting of a local authority or of a committee thereof in respect of the proceedings whereof a minute has been so made and signed shall be deemed to have been duly convened and held, and all the members present at the meeting shall be deemed to have been duly qualified, and where the proceedings are proceedings of a committee, the committee shall be deemed to have been duly constituted and to have had power to deal with the matters referred to in the minutes.

[Minutes are usually but not necessarily read, or taken as read if previously circulated to members before signing by the chairman. Confirmation of minutes means merely verification (*R. v. Mayor of York, ante*, p. 154).

A member does not make himself liable for any illegal act done at a meeting at which he was not present merely by voting subsequently for the confirmation of the minutes recording the illegal act (*Burton v. Bevan*, 1908, 2 Ch. 240).]

4. *Standing Orders*.—Subject to the provisions of this Act, a local authority may make standing orders for the regulation of their proceedings and business, and may vary or revoke any such orders.

[See *ante*, pp. 33–36.]

5. *Vacancies, &c., not to invalidate proceedings*.—The proceedings of a local authority or of a committee thereof shall not be invalidated by any vacancy among their number, or by any defect in the election or qualification of any member thereof.

6. *Quorum in cases of disqualification*.—Where more than one-third of the members of a local authority become disqualified at the same time, then, until the number of members in office is increased to not less than two-thirds of the whole number of members of the local authority, the quorum of the local authority shall be determined by reference to the number of members of the local authority remaining qualified instead of by reference to the whole number of members of the local authority.

PARISH MEETINGS

S. 77.—(1) *Parish meetings*.—Parish meetings shall be held, and the proceedings thereat shall be conducted, in accordance with the provisions of Part VI of the Third Schedule to this Act.

(2) The chairman of a parish council shall be entitled to attend a parish meeting for the parish whether he is or is not a local government elector for the parish, but, if not such an elector, he shall not be entitled to give any vote at the meeting except a casting vote.

S. 78.—*Parish meeting for parish wards, &c.*—Where a parish meeting is required or authorised to be held for a parish ward or other part of a parish, then—

- (a) the persons entitled to attend and vote at the meeting or to vote at any poll consequent thereon, shall be the local government electors registered in respect of qualifications in that parish ward or part of the parish; and
- (b) the provisions of this Act with respect to parish meetings for the whole of a parish, including the provisions with respect to the convening of a parish meeting by local government electors, shall apply as if the parish ward or part of the parish were the whole parish.

SCHEDULE III, PART VI

1.—(1) *Days and hours, &c., of meetings*.—The parish meeting of a rural parish shall assemble annually on some day between the first day of March and the first day of April, both inclusive, in every year.

(2) Subject as aforesaid, parish meetings shall be held on such days and at such times and places as may be fixed by the parish council, or, if there is no parish council, by the chairman of the parish meeting:

Provided that in a rural parish not having a separate parish council the parish meeting shall, subject to any pro-

visions made by a grouping order, assemble at least twice in every year.

(3) The proceedings at a parish meeting shall not commence earlier than six o'clock in the evening.

(4) A parish meeting shall not be held in premises licensed for the sale of intoxicating liquor, except in cases where no other suitable room is available for such meeting either free of charge or at a reasonable cost.

2.—(1) *Convening meetings.*—A parish meeting may be convened by—

- (a) the chairman of the parish council ; or
- (b) any two parish councillors ; or
- (c) in the case of a parish not having a parish council, the chairman of the parish meeting, *or any person representing the parish on the rural district council ;*
or
- (d) any six local government electors for the parish.
[The words in italics are a new provision.]

(2) Not less than seven clear days before a parish meeting, public notice thereof shall be given specifying the time and place of the intended meeting and the business to be transacted thereat, and signed by the convener or conveners of the meeting :

Provided that if any business proposed to be transacted at a parish meeting relates to the establishment or dissolution of a parish council, or to the grouping of the parish with another parish, or to the adoption of any of the adoptive Acts, not less than fourteen days' notice of the meeting shall be given.

(3) A public notice of a parish meeting shall be given—

- (a) by affixing the same to or near the principal door of each church or chapel in the parish ; and
[*I.e.* all churches and chapels of the Established Church (Ormerod v. Chadwick, 1847, 16 M. & W. 367 ; Parish Notices Act, 1837, s. 2).]
- (b) by posting the same in some conspicuous place or places in the parish ; and

- (c) in such other manner, if any, as appears to the persons convening the meeting to be desirable for giving publicity to the notice.

3.—(1) *Chairman of meeting*.—If the chairman of a parish council is present at a parish meeting for the parish, and is not a candidate for election thereat, he shall preside at the meeting.

(2) In a rural parish not having a separate parish council the chairman of the parish meeting shall preside over all assemblies of the parish meeting at which he is present.

(3) If the chairman of the parish council or the chairman of the parish meeting, as the case may be, is absent from or unable to take the chair at an assembly of the parish meeting, the parish meeting may appoint a person to take the chair, and that person shall have, for the purpose of that meeting, the powers and authority of the chairman.

[As to election of chairman, see Section 49, *post*, p. 292.]

4.—(1) *Business*.—A parish meeting may discuss parish affairs and pass resolutions thereon.

(2) Where a parish meeting is held for the election of parish councillors, opportunity shall be given at the meeting for putting questions to such of the candidates as are present, and receiving explanations from them, and any candidate shall be entitled to attend the meeting and speak thereat, but, unless he is a local government elector for the parish, shall not be entitled to vote.

5.—(1) *Determination of questions*.—Subject to the provisions of this Act, each local government elector may, at a parish meeting or at a poll consequent thereon, give one vote and no more on any question.

(2) A question to be decided by a parish meeting shall, in the first instance, be decided by the majority of those present at the meeting and voting thereon, and the decision of the person presiding at the meeting as to the result of the voting shall be final unless a poll is demanded thereon.

(3) In the case of an equality of votes the person presiding at the meeting shall have a second or a casting vote.

(4) A poll may be demanded, before the conclusion of a parish meeting, on any question arising thereat :

Provided that a poll shall not be taken unless either the person presiding at the meeting consents, or the poll is demanded by not less than five, or one-third, of the local government electors present at the meeting, whichever is the less.

(5) A poll consequent on a parish meeting shall be taken by ballot in accordance with rules made by the Secretary of State under Section 54 of this Act, and the provisions of that section shall, subject to any adaptations made by those rules, apply in the case of a poll so taken as if it were a poll for the election of parish councillors.

[See The Parish Meeting (Polls) Rules, 1936, S. R. & O. 1936.]

6.—(1) *Minutes*.—Minutes of the proceedings of a parish meeting, or of a committee thereof, shall be drawn up and entered in a book provided for that purpose, and shall be signed at the same or the next ensuing assembly of the parish meeting, or meeting of the committee, as the case may be, by the person presiding thereat, and any minute purporting to be so signed shall be received in evidence without further proof

(2) Until the contrary is proved, a parish meeting, or meeting of a committee thereof, in respect of the proceedings whereof a minute has been so made and signed shall be deemed to have been duly convened and held, and all the persons present at the meeting shall be deemed to have been duly qualified, and where the proceedings are proceedings of a committee, the committee shall be deemed to have been duly constituted and to have had power to deal with the matters referred to in the minutes.

7.—(1) *Standing orders*.—Subject to the provisions of this Act, a parish council may make, vary, and revoke standing orders for the regulation of the proceedings and business at parish meetings for the parish.

(2) In a rural parish not having a separate parish council the parish meeting may, subject to the provisions of this Act, regulate their own proceedings and business.

PARISH COUNCILS

S. 49.—(1) *Chairman and vice-chairman of parish council or meeting.*—The chairman of a parish council shall be elected annually by the council from among the councillors or persons qualified to be councillors of the parish.

(2) The election of the chairman shall be the first business transacted at the annual meeting of the council.

(3) The chairman shall, unless he resigns or ceases to be qualified or becomes disqualified, continue in office until his successor is elected.

(4) During his term of office the chairman shall continue to be a member of the council, notwithstanding the provisions of this Act relating to the retirement of parish councillors at the end of three years.

(5) The parish council may appoint a member of the council to be vice-chairman of the council.

(6) The vice-chairman shall, unless he resigns or ceases to be qualified or becomes disqualified, hold office until immediately after the election of a chairman at the next annual meeting of the council and during that time shall continue to be a member of the council, notwithstanding the provisions of this Act relating to the retirement of parish councillors at the end of three years.

(7) Subject to any standing orders made by the parish council, anything authorised or required to be done by, to or before the chairman may be done by, to or before the vice-chairman.

(8) In a rural parish not having a separate parish council, the parish meeting shall, subject to any provisions of a grouping order, at their annual assembly choose a chairman for the year, who shall continue in office until his successor is elected.

[The chairman of a parish council, if present, and if not a candidate for election, shall preside at parish meetings (Schedule III, Part VI (3)), but, if not a local government elector, shall not vote except to give a casting vote (Section 77 (2) of the Act of 1933).]

SCHEDULE III, PART IV

1.—(1) *Days of meetings.*—A parish council shall in every year hold an annual meeting and at least three other meetings.

(2) The annual meeting of a parish council shall be held on or within fourteen days after the fifteenth day of April in every year.

(3) The first meeting of a parish council constituted after the commencement of this Act shall be convened by the chairman of the parish meeting at which the first parish councillors are nominated.

(4) A meeting of a parish council shall be open to the public, unless the council otherwise direct.

(5) A meeting of a parish council shall not be held in premises licensed for the sale of intoxicating liquor, except in cases where no other suitable room is available for such meeting, either free of charge or at a reasonable cost.

2.—(1) *Convening meetings.*—The chairman of a parish council may call a meeting of the council at any time.

(2) If the chairman refuses to call a meeting of the council after a requisition for that purpose, signed by two members of the council, has been presented to him, or if, without so refusing, the chairman does not call a meeting within seven days after such requisition has been presented to him, any two members of the council, on that refusal or on the expiration of those seven days, as the case may be, may forthwith convene a meeting of the council.

(3) Three clear days at least before a meeting of a parish council—

(a) notice of the time and place of the intended meeting shall be affixed in some conspicuous place in the parish, and where the meeting is called by members of the council the notice shall be signed by those members and shall specify the business proposed to be transacted thereat ;

(b) a summons to attend the meeting specifying the business proposed to be transacted thereat and

signed by the clerk of the council shall be left at or sent by post to the usual place of residence of every member of the council :

Provided that want of service of the summons on any member of the council shall not affect the validity of a meeting.

[As to clear days and Sundays, see *ante*, p. 17.]

3.—(1) *Chairman of meeting*.—At a meeting of a parish council the chairman of the council, if present, shall preside.

(2) If the chairman of the council is absent from a meeting of the council, the vice-chairman of the council, if present, shall preside.

(3) If both the chairman and vice-chairman of the council are absent from a meeting of the council, such councillor as the members of the council present shall choose shall preside.

[See Section 49, *ante*, p. 292, as to election of chairman and appointment of vice-chairman.]

4. *Quorum*.—Subject to the provisions of Part V (*ante*, p. 286) of this Schedule, no business shall be transacted at a meeting of a parish council unless at least one-third of the whole number of members of the council are present thereat :

Provided that in no case shall the quorum be less than three members.

5. *Mode of voting*.—The mode of voting at meetings of a parish council shall be by show of hands, and *on the requisition of any member of the council* the voting on any question shall be recorded so as to show whether each member present and voting gave his vote for or against that question.

[The record of voting can be conveniently made in the minutes of proceedings in connection with the particular business transacted. The Local Government Act, 1894, Schedule I, Part 2 (8), formerly provided that in any event the names of those voting should be recorded.]

DISTRICT ' COUNCILS

Chairman and Vice-Chairman of District Council

S. 33.—(1) *Chairman of district council.*—The chairman of a district council shall be elected annually by the council from among the councillors or *persons qualified to be councillors of the district.*

[This section applies to both urban and rural district councils and provides that a chairman may be elected from outside the council. As to filling casual vacancies in the office of chairman, see Section 66.]

(2) The election of the chairman shall be the first business transacted at the annual meeting of the council.

(3) The chairman shall, unless he resigns or ceases to be qualified or becomes disqualified, continue in office until his successor becomes entitled to act as chairman.

(4) During his term of office the chairman shall continue to be a member of the council, notwithstanding the provisions of this Act relating to the retirement of district councillors at the end of three years.

(5) The chairman shall, by virtue of his office, be a justice of the peace for the county or for each county in which the district is wholly or in part situate, but before acting as a justice of the peace for a county, he shall take the oaths required by law to be taken by a justice of the peace for that county unless he is, at the date on which he becomes entitled to act as chairman, a justice of the peace for that county and has taken the oaths required by law to be taken to enable him to act as a justice of the peace for that county.

[He must also make a declaration of acceptance of office (Section 61).

Section 62 makes provision for the resignation of any person elected to any office under the Act, and in *R. v. Sunderland Corporation* (1911, 2 K. B. 458) it was held that a person appointed to serve on a committee may lawfully resign against the will of the council appointing him.]

S. 34.—(1) *Vice-chairman.*—A district council may appoint

a member of the council to be vice-chairman of the council, and the vice-chairman shall, unless he resigns or ceases to be qualified or becomes disqualified, hold office until immediately after the election of a chairman at the next annual meeting of the council, and during that time shall continue to be a member of the council notwithstanding the provisions of this Act relating to the retirement of district councillors at the end of three years.

(2) Subject to any standing orders made by the district council, anything authorised or required to be done by, to or before the chairman may be done by, to or before the vice-chairman, except that he shall not, as vice-chairman, act as a justice of the peace.

[If the chairman is absent, the vice-chairman, if present, shall preside at meetings of the council (Schedule III, Part III, 3 (2)).]

SCHEDULE III, PART III

1.—(1) *Days of meetings.*—The council of an urban or rural district (in this Part of this Schedule referred to as “the council”) shall, in every year hold an annual meeting and at least three other meetings for the transaction of general business.

(2) The annual meeting of the council shall be held on or as soon as conveniently may be after the fifteenth day of April in every year.

(3) A meeting of the council shall not be held in premises licensed for the sale of intoxicating liquor, except in cases where no other suitable room is available for such meeting either free of charge or at a reasonable cost.

2.—(1) *Convening meetings.*—The chairman of the council may call a meeting of the council at any time.

(2) If the chairman refuses to call a meeting of the council after a requisition for that purpose, signed by five members, or by one-fourth of the whole number of members, of the council, whichever is the less, has been presented to him, or if, without so refusing, the chairman does not call a meeting within seven days after such requisition has been presented

to him, any five members, or one-fourth of the whole number of members, of the council, whichever is the less, on that refusal or on the expiration of seven days, as the case may be, may forthwith call a meeting of the council.

(3) Three clear days at least before a meeting of the council—

(a) notice of the time and place of the intended meeting shall be published at the offices of the council, and where the meeting is called by members of the council the notice shall be signed by those members and shall specify the business proposed to be transacted thereat; and

(b) a summons to attend the meeting, specifying the business proposed to be transacted thereat, and signed by the clerk of the council, shall be left at or sent by post to the usual place of residence of every member of the council:

Provided that want of service of the summons on any member of the council shall not affect the validity of a meeting.

[As to clear days and Sundays, see *ante*, p. 17.]

3.—(1) *Chairman of meeting*.—At a meeting of the council the chairman of the council, if present, shall preside.

(2) If the chairman of the council is absent from a meeting of the council, the vice-chairman of the council, if present, shall preside.

(3) If both the chairman and vice-chairman of the council are absent from a meeting of the council, such councillor as the members of the council present shall choose shall preside.

4. *Quorum*.—Subject to the provisions of Part V of this Schedule (*ante*, p. 286), no business shall be transacted at a meeting of the council, unless at least one-third of the whole number of members of the council are present thereat:

Provided that in no case shall a larger quorum than seven members be required.

5. *Inspectors may attend meetings*.—An inspector appointed by the Minister shall be entitled to attend any meeting of the council as and when directed by the Minister, and to

take part in the proceedings thereat but not to vote at the meeting.

6. *Mode of voting.*—The mode of voting at meetings of the council shall be by show of hands, and on the requisition of any member of the council the voting on any question shall be recorded so as to show whether each member present and voting gave his vote for or against that question.

[Names of members voting need not be recorded in future, unless any member requires it.]

BOROUGH COUNCILS

The Mayor

S. 18.—(1) *Qualification, term of office, salary, precedence, and powers of mayor.*—The mayor shall be elected annually by the council of the borough from among the aldermen or councillors of the borough or persons qualified to be aldermen or councillors of the borough.

[The mayor may thus be elected from outside the council if qualified to be an alderman or councillor. He must make a declaration of acceptance of office as provided by Section 61.]

(2) The term of office of the mayor shall be one year, but he shall, unless he resigns or ceases to be qualified or becomes disqualified, continue in office until his successor becomes entitled to act as mayor.

(3) During his term of office, the mayor shall continue to be a member of the council, notwithstanding the provisions of this Act relating to the retirement of councillors of a borough at the end of three years.

(4) The council may pay to the mayor such remuneration as they think reasonable.

(5) The mayor shall have precedence in all places in the borough :

Provided that nothing in this subsection shall prejudicially affect His Majesty's royal prerogative.

(6) Save as otherwise expressly provided in this Act, nothing in this Act shall affect any functions of the mayor existing immediately before the commencement of this Act.

(7) The mayor shall, by virtue of his office, be a justice of the peace for the borough and shall, unless he ceases to be qualified or becomes disqualified for being mayor, continue to be such a justice during the year next after he ceases to be mayor, but before acting as such justice he shall take the oaths required by law to be taken by a justice of the peace for the borough unless he is, at the date on which he becomes entitled to act as mayor, a justice of the peace for the borough and has taken the oaths required by law to be taken to enable him to act as a justice of the peace for the borough.

[Borough funds may not be used for the purchase of a chain of office (*A. G. v. Batley Corporation*, 1872, 26 L. T. 392).]

(8) The mayor of a non-county borough shall, in addition, during his term of office be a justice of the peace for the county in which the borough is situate, but before acting as such justice he shall take the oaths required by law to be taken by a justice of the peace for the county unless he is, at the date on which he becomes entitled to act as mayor, a justice of the peace for the county and has taken the oaths required by law to be taken to enable him to act as a justice of the peace for the county.

(9) The mayor, if present, shall be entitled to preside at all meetings of justices of the peace held in the borough :

Provided that the mayor shall not, by virtue of this sub-section, be entitled to preside at meetings of justices of the peace acting in and for the county in which the borough is situate except when acting in relation to the business of the borough, or at meetings when any stipendiary magistrate having jurisdiction in the borough is engaged in administering justice.

(10) The mayor shall not be required to make the declaration required to be made by a justice of the peace for a borough under Section 157 of the Municipal Corporations Act, 1882.

S. 19.—(1) *Election of mayor*.—The election of the mayor shall be the first business transacted at the annual meeting of the council.

(2) An outgoing alderman shall not, as alderman, vote at the election of the mayor.

(3) In the case of an equality of votes, the person presiding at the meeting, whether or not entitled to vote in the first instance, shall have a casting vote.

[Schedule III, Part II, 3, provides that the mayor, if present, shall preside at meetings of the council even apparently if he be a candidate for re-election (*R. v. Jackson*, 1913, 3 K. B. 436, but also see *R. v. White*, 1867, L. R., 2 Q. B. 557). By Section 76 (1), formerly Section 22 (3) of the Municipal Corporations Act, 1882, he is debarred from voting for himself if a salary is attached to his office (*Nell v. Longbottom*, 1894, 1 Q. B. 767).]

S. 20.—(1) *Power of mayor to appoint deputy.*—The mayor may appoint an alderman or councillor of the borough to be deputy mayor, and the person so appointed shall, unless he resigns or ceases to be qualified or becomes disqualified, *hold office until a newly elected mayor becomes entitled to act as mayor.*

(2) The appointment of a deputy mayor shall be signified to the council in writing and be recorded in the minutes of the council.

(3) The deputy mayor may, if for any reason the mayor is unable to act, or the office of mayor is vacant, discharge all functions which the mayor as such might discharge, except that he shall not take the chair at a meeting of the council unless specially appointed by the meeting to do so, and shall not, as deputy mayor, act as a justice of the peace.

[A deputy mayor holding office until a newly elected mayor becomes entitled to act as mayor is not required to make a declaration of acceptance of office and may take the chair at a council meeting in accordance with Schedule III, Part II, 3.

The mayor, who may be elected from outside the council, is *elected* by the council; the deputy mayor, who must be a member of the council, is appointed by the mayor.]

SCHEDULE III, PART II

1.—(1) *Days and hours of meetings.*—The council of a borough shall in every year hold an annual meeting and at least three other meetings, which shall be as near as may be at regular intervals, for the transaction of general business.

(2) The annual meeting shall be held at twelve noon, or at such other hour as the council may from time to time determine, on each ninth day of November, and the other meetings shall be held at such hour on such other days before the first day of November next following as the council at the annual meeting decide, or by standing order determine.

[If the 9th is a Sunday or day of public thanksgiving or mourning, the date of the annual meeting is to be "the first day thereafter which is not one of the days before-mentioned" (Section 295 of the Act of 1933). Formerly there was no alternative as to time of meeting. The Municipal Corporations Act, 1882, Schedule II, provided that the meeting should be held at noon.]

2.—(1) *Convening meetings.*—The mayor may call a meeting of the council at any time.

(2) If the mayor refuses to call a meeting after a requisition for that purpose, signed by five members, or by one-fourth of the whole number of members, of the council, whichever is the less, has been presented to him, or if, without so refusing, the mayor does not call a meeting within seven days after such requisition has been presented to him, any five members, or one-fourth of the whole number of members, of the council, whichever is the less, on that refusal or on the expiration of seven days, as the case may be, may forthwith call a meeting of the council.

(3) Three clear days at least before a meeting of the council of a borough—

- (a) notice of the time and place of the intended meeting shall be published at the town hall, and where the meeting is called by members of the council the notice shall be signed by those members and shall

specify the business proposed to be transacted thereat ; and

- (b) a summons to attend the meeting specifying the business proposed to be transacted thereat, and signed by the town clerk, shall be left at or *sent by post* to the usual place of residence of every member of the council :

Provided that want of service of the summons on any member of the council shall not affect the validity of a meeting.

[As to clear days and Sundays, see *ante*, p. 17. Signatures of members may be printed (*Brydges v. Dix*, 1891, 7 T. L. R. 215). The Municipal Corporations Act, 1882, Schedule III, 6, formerly provided that notices should be sent by registered post.]

(4) Except in the case of business required by this Act to be transacted at the annual meeting of the council, no business shall be transacted at a meeting of the council other than that specified in the summons relating thereto.

3.—(1) *Chairman of meeting*.—At a meeting of the council of a borough the mayor, if present, shall preside.

(2) If the mayor is absent from a meeting of the council, the deputy mayor, if chosen for that purpose by the members of the council then present, shall preside.

(3) If both the mayor and the deputy mayor are absent from a meeting of the council, or the deputy mayor being present is not chosen, such alderman, or in the absence of all the aldermen, such councillor, as the members of the council present shall choose, shall preside.

4. *Quorum*.—Subject to the provisions of Part V of this Schedule (*ante*, p. 286), no business shall be transacted at a meeting of the council of a borough, unless at least one-third of the whole number of members of the council are present thereat.

[*Mode of voting*.—As there is no statutory provision, as in the case of parish councils and district councils, that voting shall be by show of hands, and no provision as to recording of votes, voting may be by division or even by

ballot, subject to any regulations laid down by standing orders.]

COUNTY COUNCILS

Chairman and Vice-Chairman

3.—(1) *Chairman of county council.*—The chairman of a county council shall be elected annually by the county council from among the county aldermen or county councillors or persons qualified to be county aldermen or county councillors.

(2) The chairman shall, unless he resigns or ceases to be qualified or becomes disqualified, continue in office until his successor becomes entitled to act as chairman.

(3) During his term of office, the chairman shall continue to be a member of the council notwithstanding the provisions of this Act relating to the retirement of county councillors at the end of three years.

(4) The county council may pay to the chairman such remuneration as they think reasonable.

[Travelling expenses of members of the county council may also be defrayed by the council, Section 294. This does not apply to borough, district or parish councillors.]

(5) The chairman shall, by virtue of his office, be a justice of the peace for the county, but before acting as such justice he shall take the oaths required by law to be taken by a justice of the peace for the county, unless he is, at the date on which he becomes entitled to act as chairman, a justice of the peace for the county and has taken the oaths required by law to be taken to enable him to act as a justice of the peace for the county.

4.—(1) *Election of chairman.*—The election of the chairman shall be the first business transacted at the annual meeting of the county council.

(2) An outgoing county alderman shall not, as alderman, vote at the election of a chairman.

(3) In the case of an equality of votes, the person presiding at the meeting, whether or not entitled to vote in the first instance, shall have a casting vote,

5.—(1) *Vice-chairman*.—A county council shall appoint a member of the council to be vice-chairman of the council.

[This appointment is made by the council, whereas a deputy mayor is appointed by the mayor, see Section 20.]

(2) The vice-chairman shall, unless he resigns or ceases to be qualified or becomes disqualified, hold office until immediately after the election of a chairman at the next annual meeting of the council and during that time shall continue to be a member of the council notwithstanding the provisions of this Act relating to the retirement of county councillors at the end of three years.

[He may thus hold office notwithstanding a vacancy in the office of chairman.]

(3) Subject to any standing orders made by the county council, anything authorised or required to be done by, to or before the chairman may be done by, to or before the vice-chairman, except that he shall not, as vice-chairman, act as a justice of the peace.

[A vice-chairman need not, but a chairman must, make a declaration of acceptance of office, Section 61.]

SCHEDULE III, PART I

1.—(1) *Days and hours of meetings*.—A county council shall in every year hold an annual meeting and at least three other meetings, which shall be as near as may be at regular intervals, for the transaction of general business.

(2) The annual meeting shall be held—

(a) in a year which is the year of election of county councillors, on the sixteenth day of March, or such other day within fourteen days after the eighth day of March as the county council may fix; and

(b) in any other year, on such day in the months of March, April or May as the county council may fix;

and the meeting shall be held at such hour as the council may fix, or if no hour is so fixed at twelve noon.

(3) The other meetings shall be held at such hour and on such other days before the eighth day of March next following

as the county council at the annual meeting decide, or by standing order determine.

(4) Meetings of a county council shall be held at such place, either within or without the county, as the council may direct.

2.—(1) *Convening meetings.*—The chairman of a county council may call a meeting of the council at any time.

(2) If the chairman refuses to call a meeting of the council after a requisition for that purpose, signed by five members of the council, has been presented to him, or if, without so refusing, the chairman does not call a meeting within seven days after such requisition has been presented to him, any five members of the council, on that refusal or on the expiration of seven days, as the case may be, may forthwith call a meeting of the council.

(3) Three clear days at least before a meeting of a county council—

(a) notice of the time and place of the intended meeting shall be published at the offices of the council, and where the meeting is called by members of the council the notice shall be signed by those members and shall specify the business proposed to be transacted thereat; and

(b) a summons to attend the meeting, specifying the business proposed to be transacted thereat, and *signed by the clerk of the county council*, shall be left at or *sent by post* to the usual place of residence of every member of the council:

Provided that want of service of the summons on any member of the council shall not affect the validity of a meeting.

[As to clear days and Sundays, see *ante*, p. 17. Ordinary notices of meetings follow now the general rule that they should be signed by the clerk. The chairman only signs the notice of a meeting when he convenes it himself. Registered post, formerly obligatory, is no longer necessary.]

(4) The notice of a meeting of a county council at which a resolution for the payment of a sum out of the county

fund (otherwise than for ordinary periodical payments), or a resolution for incurring any costs, debt, or liability exceeding fifty pounds, will be proposed, shall state the amount of the said sum, costs, debt, or liability, and the purposes for which they are to be paid or incurred.

(5) Except in the case of business required by this Act to be transacted at the annual meeting of the council, no business shall be transacted at a meeting of the council other than that specified in the summons relating thereto.

[See Longfield Parish Council *v.* Wright (*ante*, p. 12) as to failure of a resolution owing to breach of a similar regulation.]

3.—(1) *Chairman of meeting*.—At a meeting of a county council the chairman of the council, if present, shall preside.

(2) If the chairman of the council is absent from a meeting of the council, the vice-chairman of the council, if present, shall preside.

(3) If both the chairman and vice-chairman of the council are absent from a meeting of the council, such county alderman, or in the absence of all the county aldermen such county councillor, as the members of the council present shall choose, shall preside.

4. *Quorum*.—Subject to the provisions of Part V of this Schedule (*ante*, p. 286), no business shall be transacted at a meeting of a county council unless at least one-fourth of the whole number of members of the council are present thereat.

CHAPTER XXV

LONDON

LONDON COUNTY COUNCIL

Meetings and Proceedings of Council

BY Section 50 (1) of the London Government Act, 1939, the provisions of Parts I and III of the Third Schedule of the Act are to have effect as respects the meetings and proceedings of the county council.

SCHEDULE III, PART I

1.—(1) The county council shall in every year hold an annual meeting and such other meetings as it considers necessary for the transaction of its business.

(2) The annual meeting shall be held—

(a) in a year which is the year of election of county councillors, on the sixteenth day of March, or such other day within fourteen days after the eighth day of March as the council may determine ;

(b) in any other year, on such day in the month of March, April, or May as the council may determine ;

and at such hour as the council may determine.

(3) The other meetings shall be held on such other days and at such hour as the council may determine.

(4) Meetings of the county council shall be held at such place, either within or without the county, as the council may determine.

2.—(1) The chairman of the county council may call a meeting of the council at any time.

(2) If the chairman refuses to call a meeting of the council after a requisition for that purpose, signed by twenty members of the council, has been presented to him, or if, without so refusing, he does not within seven days after the requisition has been presented to him call a meeting, any twenty members of the council may forthwith on his so refusing or on the expiration of the seven days, as the case may be, call a meeting of the council.

(3) Forty-eight hours at least before a meeting of the county council—

- (a) notice of the time and place of the intended meeting, signed by the chairman of the council or by the members calling the meeting, shall be published at the county hall, and where the meeting is called by the members of the council the notice shall specify the business proposed to be transacted thereat ; and
- (b) a summons to attend the meeting, specifying the business proposed to be transacted thereat and signed by the clerk of the county council, shall be left at, or sent by post to, the last-known place of residence of every member of the council :

Provided that—

(i) want of service of the summons on any member of the council shall not affect the validity of a meeting ; and

(ii) if a member of the council gives notice in writing to the clerk of the council that he desires summonses to attend meetings of the council to be sent to him at some address (to be specified in the notice) other than his place of residence, any summons addressed to him and delivered at or sent by post to the address so specified shall be deemed sufficient service of the summons.

(4) Except in the case of business required by this Act to be transacted at the annual meeting of the county council, or except in the case of a matter of urgency brought before the meeting in accordance with any standing order made by the council, no business shall be transacted at a meeting of the council other than that specified in the summons relating thereto.

3.—(1) At a meeting of the county council the chairman of the council, if present, shall preside.

(2) If the chairman of the council is absent from a meeting of the council, the vice-chairman or, in his absence, the deputy chairman (if any), of the council, if present, shall preside.

(3) If the chairman, vice-chairman, and deputy chairman

(if any) are all absent from a meeting of the council, such member of the council as the members present shall choose shall preside.

4.—No business shall be transacted at a meeting of the county council unless at least one-fourth of the whole number of members of the council are present thereat :

Provided that, where more than one-third of the members of the council become disqualified at the same time, the foregoing provision shall, until the number of members in office is increased to not less than two-thirds of the whole number of members of the council, have effect as if for the reference to the whole number of members of the council there were substituted a reference to the number of members of the council remaining qualified.

SCHEDULE III, PART III

1.—(1) Subject to the provisions of any enactment (including any enactment in this Act), all acts of a local authority, and all questions coming or arising before a local authority, shall be done and decided by a majority of the members of the authority present and voting thereon at a meeting of the authority.

(2) In the case of an equality of votes, the person presiding at the meeting, whether or not he voted, or was entitled to vote, in the first instance, may give a casting vote.

2.—The names of the members present at a meeting of a local authority shall be recorded.

3.—(1) Minutes of the proceedings of a meeting of a local authority shall be drawn up and printed, and shall be signed at the same or next ensuing meeting of the authority by the person presiding thereat, and any minute purporting to be so signed shall be received in evidence without further proof.

(2) Until the contrary is proved, a meeting of a local authority in respect of the proceedings of which a minute has been so signed shall be deemed to have been duly convened and held, and all the members present at the meeting shall be deemed to have been duly qualified.

[By Section 173, the minutes of proceedings of a local authority are to be open to the inspection of any local government elector for its area on payment of a fee not exceeding

one shilling, and any such local government elector may make a copy thereof or an extract therefrom.]

4.—Subject to the provisions of this Act, a local authority may make standing orders for the regulation of its proceedings and business, and may vary or revoke any such orders.

5.—The proceedings of a local authority shall not be invalidated by any vacancy among its number, or by any defect in the election or qualification of any of its members.

Committees

By Section 59 of the London Government Act, 1939, a local authority may appoint a committee for any such general or special purpose as in the opinion of the authority would be better regulated and managed by means of a committee. By Section 69, in the case of an equality of votes at a meeting of a committee, the person presiding, whether or not he voted or was entitled to vote in the first instance, may give a casting vote. The minutes of the proceedings of such committee are to be drawn up and signed at the same or a subsequent meeting by the person presiding thereat, and any such minute purporting to be so signed is to be received in evidence without further proof.

The duly appointed executive committee of a county council made an order delegating to local sub-committees its powers under the Contagious Diseases (Animals) Acts and under certain Orders in Council, including the Rabies Order, 1887. Subsequently to such delegation the executive committee, without expressly revoking the delegation, issued certain regulations under the Rabies Order, 1887, as to the muzzling of dogs and keeping them under control; no regulations under that order had been issued by the local sub-committee. It was held that the delegation was not equivalent to a resignation by the executive committee of its own powers; that the delegated authority was subject to resumption at any time; and that the regulations were therefore valid (*Huth v. Clarke*, 1890, 25 Q. B. D. 391).

Where a board constituted by statute are authorised by it to delegate any of their powers to a committee, the powers

so conferred upon the committee must be exercised by them acting in concert ; and it is not competent to the committee to apportion amongst themselves the duties so delegated to them ; and one of them acting alone, pursuant to such apportionment, cannot justify his acts under the statute.

If a contract which requires to be under seal is entered into by a committee not appointed under seal, it is invalid unless it is afterwards ratified by the council under seal (*Oxford Corporation v. Crow*, 1893, 3 Ch. 535).

A committee, appointed by a vestry for the purpose of executing the Metropolis Management Acts, so far as they related to the public health of the parish, being informed by the sanitary inspector that a nuisance existed upon certain premises, directed the inspector to serve notice upon the owner of the premises requiring him to abate the nuisance, and in default to take proceedings. The inspector served the required notice, and, upon the owner failing to comply with it, a summons was issued. After the issue of the summons and before the hearing, the vestry by resolution approved the acts of the committee. It was held that the approval of the vestry, although given after the service of the notice and issue of the summons, was sufficient (*Firth v. Staines*, 1897, 2 Q. B. 70).

METROPOLITAN BOROUGH COUNCILS

Meetings and Proceedings of Councils

By Section 50 (3) of the London Government Act, 1939, the provisions of Parts II and III of the Act are to have effect as respects the meetings and proceedings of a borough council.

SCHEDULE III, PART II

1.—(1) A borough council shall in every year hold an annual meeting and such other meetings as it considers necessary for the transaction of its business.

(2) The annual meeting shall be held on the ninth day of November at such hour as the council may determine.

(3) The other meetings shall be held on such other days and at such hour as the council may determine.

2.—(1) The mayor of a borough may call a meeting of the borough council at any time.

(2) If the mayor refuses to call a meeting after a requisition for that purpose, signed by one-fourth of the whole number of members of the council, has been presented to him, or if, without so refusing, the mayor does not within seven days after the requisition has been presented to him call a meeting, any members of the council, not being less than one-fourth of the whole number thereof, may forthwith on his so refusing, or on the expiration of those seven days, as the case may be, call a meeting of the council.

(3) Three clear days at least before a meeting of a borough council—

(a) notice of the time and place of the intended meeting shall be published at the offices of the council, and where the meeting is called by members of the council the notice shall be signed by those members and shall specify the business proposed to be transacted thereat; and

(b) a summons to attend the meeting, specifying the business proposed to be transacted thereat, and signed by the town clerk, shall be left at, or sent by post to, the last-known place of residence of every member of the council:

Provided that want of service of the summons on any member of the council shall not affect the validity of a meeting.

[If the meeting is convened for a special purpose, the notice must state that purpose (*Livingstone v. Westminster Corporation*, 1904, 2 K. B. at p. 114).]

In the following cases a specified notice as to time is required:—

1. Ten clear days by advertisement of a meeting to authorise proceedings in Parliament (Local Government Act, 1933, Section 254).

2. One month where the meeting is to consider the grant

of a superannuation allowance or gratuity to an officer (Superannuation (Metropolis) Act, 1866, Section 7).]

(4) Except in the case of business required by this Act to be transacted at the annual meeting of a borough council, no business shall be transacted at a meeting of the council other than that specified in the summons relating thereto.

3.—(1) At a meeting of a borough council the mayor of the borough, if present, shall preside.

(2) If the mayor is absent from a meeting of the borough council, the deputy mayor, if present, shall preside.

(3) If both the mayor and the deputy mayor are absent, such alderman, or in the absence of all the aldermen, such councillor, as the members of the council present shall choose, shall preside.

4.—No business shall be transacted at a meeting of a borough council unless at least one-third of the whole number of members of the council are present thereat :

Provided that, where more than one-third of the members of the council become disqualified at the same time, the foregoing provision shall, until the number of members in office is increased to not less than two-thirds of the whole number of members of the council, have effect as if for the reference to the whole number of members of the council there were substituted a reference to the number of members of the council remaining qualified.

SCHEDULE III, PART III

1.—(1) Subject to the provisions of any enactment (including any enactment in this Act), all acts of a local authority, and all questions coming or arising before a local authority, shall be done and decided by a majority of the members of the authority present and voting thereon at a meeting of the authority.

(2) In the case of an equality of votes, the person presiding at the meeting, whether or not he voted, or was entitled to vote, in the first instance, may give a casting vote.

2.—The names of the members present at a meeting of a local authority shall be recorded.

3.—(1) Minutes of the proceedings of a meeting of a local authority shall be drawn up and printed, and shall be signed at the same or next ensuing meeting of the authority by the person presiding thereat, and any minute purporting to be so signed shall be received in evidence without further proof.

(2) Until the contrary is proved, a meeting of a local authority in respect of the proceedings of which a minute has been so signed shall be deemed to have been duly convened and held, and all the members present at the meeting shall be deemed to have been duly qualified.

[As to inspection of the minutes, see Section 173 (*ante*, p. 309).

The attendance book signed by a member, and the minute book containing his name, are evidence of such member having acted as a member of the council (*Hunnings v. Williamson*, 1883, 11 Q. B. D. 533).]

4.—Subject to the provisions of this Act, a local authority may make standing orders for the regulation of its proceedings and business, and may vary or revoke any such orders.

5.—The proceedings of a local authority shall not be invalidated by any vacancy among its number, or by any defect in the election or qualification of any of its members.

Committees

As to the power of a local authority to appoint committees, see *ante*, p. 310.

THE CORPORATION OF THE CITY OF LONDON

The citizens and freemen of the City of London form a body corporate, by the name of the Mayor and Commonalty and Citizens of the City of London, with a common seal known as the common seal of the City of London. It discharges its functions through three assemblies, viz. the Common Hall, the Court of Aldermen, the Court of Common Council.

The chief officer of the City is the Mayor, and he is styled "Lord Mayor," the earliest instance of his being so called in English being in 1486. He is entitled to be styled the "Right Honourable," which honour he alone shares with the Lord Mayor of York and the Chairman of the London County Council. At the election of Lord Mayor on the 29th of September in each year the liverymen of the City, in Common Hall assembled, nominate two aldermen who have filled the office of sheriff, from whom the Court of Aldermen finally select one for the office.

The Lord Mayor presides over all the corporation assemblies, none of which can be held except by his consent and direction, and the business whereof is subject to his control.

An alderman who has held the office of Lord Mayor can act as his *locum tenens* if appointed by the Lord Mayor under seal for that purpose.

In case of the death of the Lord Mayor during his term of office, it is the custom to suspend all important business pending the appointment of his successor; in the meantime the senior alderman acts as *locum tenens*.

The Court of Aldermen

Each of the 26 city wards elects an alderman who holds office during good behaviour but may be removed for just and reasonable cause, and, *inter alia*, on bankruptcy or insolvency, absence for more than six consecutive months without reasonable cause, conviction of fraud and crime.

Unlike those of other corporations, the aldermen form a

second chamber and sit apart and also with the common council.

The Court sits in public and the Lord Mayor presides, 13 forming a quorum. There are four standing committees, each consisting of the whole Court, viz. privileges, gaols, general purposes, and finance, the proceedings of which are regulated by Standing Orders. The chairmen of these committees are appointed at the commencement of each mayoralty.

This Court, *inter alia*, appoints the recorder, exercises jurisdiction over the livery companies, and regulates the City police.

To an alderman is entrusted the rule and government of his ward; he usually appoints a deputy from among the common councilmen, called the deputy.

All the aldermen are justices of the peace, and are justices of oyer and terminer, and, as such, are named in the commission for holding the sessions at the Central Criminal Court.

The Court of Common Council

This Court consists of the Lord Mayor and aldermen and also 206 common councilmen, elected annually on St. Thomas's Day, 21st December, and is called the "Court of the Mayor, Aldermen, and Commons of the City of London in Common Council Assembled." The Lord Mayor or his *locum tenens* presides, and meetings are called at his discretion, but seven members can requisition him to call a court at any time. The quorum is 40, one of whom must be the Lord Mayor or his *locum tenens*, and two at least must be aldermen. Proceedings are governed by Standing Orders.

This Court appoints the corporation officers, save those appointed by the Crown, the Court of Aldermen, and the Livery, and exercises all municipal functions.

Its powers and duties include, *inter alia*, control of public markets in the county of London, bridges in the City of London, and landed property of the corporation; and the corporation is the port sanitary authority for the Port of London.

The common seal granted by Henry III can only be affixed in open court after a formal resolution by the Court of Common Council.

The Common Hall

The Common Hall consists of the Lord Mayor, at least four aldermen, the sheriffs, and such of the liverymen as are freemen of the City of London, and is styled "the Meeting or Assembly of the Mayor, Aldermen, and Liverymen of the several companies of the City of London in Common Hall Assembled."

It meets twice a year, on Midsummer and Michaelmas day, and, *inter alia*, nominates two aldermen for the mayoralty, elects the sheriffs, the chamberlain, the auditors and bridge masters. The elections are by show of hands, and if a poll is demanded it is held in the same way as a poll for the election of common councilmen, *i.e.* by ballot (City of London Ballot Act, 1887).

APPENDICES

APPENDIX I

NOTES AND DEFINITIONS OF TERMS

Absence of Chairman.—If the person elected as chairman is not present at the appointed time of meeting, his place should be taken by the vice-chairman. If the vice-chairman is absent, some duly qualified person present should be proposed and seconded and duly appointed to the chair. The elected chairman need not vacate the chair should the laggard chairman arrive subsequently.

Acceptance of Office.—In many statutory bodies or bodies governed by a scheme approved by an order in council or Government department, no member can act as such until he has signed a declaration of acceptance of office, and of willingness to act.

Acclamation.—When a motion is agreed to with such loud, eager expression of assent or approval that no dissenting voices are noticeable.

Ad hoc.—To or for this, for this particular purpose.

Adjournment.—The postponing or deferring the further proceedings of a meeting generally to another day ; there may be an adjournment of the meeting itself or of the debate on any particular subject.

Admission of Press depends upon standing orders or by-laws of statutory body, or articles in the case of a joint stock company. As regards meetings of local authorities, the question of admission of the press is now governed mainly by The Admission of the Press to Meetings Act, 1908, although such admission is not infrequently also regulated by standing orders or resolutions.

Agenda.—The items of business for consideration at a public meeting ; the term is often applied to the agenda paper itself.

Agenda Paper.—The paper on which are arranged the items of business in a regular order which should as a rule be adhered to at a meeting.

Aliunde.—From another place or person.

Amendment.—A proposed alteration in the terms of a motion submitted to a meeting for adoption ; extended to a resolution proposed instead of or in opposition to another.

Ante (before) refers to a previous passage or page.

Attorn.—To constitute or appoint ; to yield allegiance.

Attorney.—One appointed to act for another, an agent duly appointed or constituted by letter or power of attorney to act for another.

Ballot.—The method or system of secret voting ; originally by means of small balls placed in an urn or box, hence applied to the ticket or paper so used.

A provision in articles for the determination of the directors to retire " by ballot " means that the determination must be " by lot " (Eyre v. Milton Proprietary, 1936, 52 T. L. R. 208).

Bankruptcy of a member of a statutory or other public body generally makes him incapable of retaining his seat.

Behaviour of Speaker.—A speaker should address his remarks to the chair, and, except perhaps when in committee, remain standing whilst speaking. He should obey, as a rule, the ruling of the chairman, and remember that what he has to say depends upon the audience and the occasion. Offensive personal remarks, imputation of wrong motives, want of fairness, and a general lack of consideration toward those from whom he differs serve only to weaken his cause and tend to alienate the sympathies of his supporters. As a general rule a twenty minutes' speech from the average speaker is the limit of endurance of his audience.

Bonâ fide.—With good faith.

Bylaws.—Laws or ordinances dealing with matters of local or internal regulations made by a local authority, or by the members of a corporation or association.

" **Chuckers Out** " are persons engaged to expel disturbers or opponents from public meetings. Sons of Anak, with wrestling and boxing experience, are preferable for this work.

Closure.—The closing of debate on a specific question in a legislative assembly or other deliberative body by vote of the house or by other competent authority. It is generally put in the form " That the question be now put," and it is applied when a motion has been reasonably discussed or discussed for a certain time. As a Parliamentary institution, it came into being in the Session of 1882. In 1880, the increasing length of debates and the development of obstruction in the House of Commons compelled it to seek a means of closing a discussion which, in its opinion, had been sufficiently debated. The rule now is that any member rising in his place may claim to move the closure after a question has been proposed. If the chair, *i.e.* the Speaker or Chairman, is of opinion that the motion is not an abuse of the rules of the House, nor an infringement of the rights of the minority, and that the question before the House has been sufficiently debated, it is put forthwith without debate or amendment. On a division, it must be supported by at least one hundred members, to make it effective. Closure may be of one of three kinds—

- (1) Ordinary closure as above.
- (2) Guillotine closure, *post*, p. 324.
- (3) Kangaroo closure, *post*, p. 325.

The Guillotine or Kangaroo closures in the House of Commons were originally understood to be limited strictly to rare occasions. In recent years they have been applied to all great measures, and have apparently become an ordinary part of the procedure of the House of Commons. In all probability, this drastic method of curtailing debate will be generally applied to every great Parliamentary measure, thus making debate more perfunctory. As a rule, no debate is allowed on the proposal to apply the closure.

Committee.—"A 'committee' is hee to whom the consideration or ordering of any matter is referred either by some Court or consent of the parties to whom it appertains" [*Terms de la Ley*]. Originally each member was called a committee. "These committees, when they meet, they elect one of them to sit in the chair in likeness of the speaker" (*Coke's Inst.*, 4 Inst., p. 11).

Committee of a Lunatic.—The person to whom the care and custody of a lunatic is committed by the Court.

Common Seal.—The seal of a corporation is a seal used by a corporation as the sign of their incorporation.

Communitas.—Community; society.

Computation of Time.—"In three clear days at the least"; the day of meeting must be excluded from the computation as well as the day of the notice.

Consensus ad idem.—Agreement to the same thing.

Control of Meeting.—When validly constituted a meeting is in the hands and control of the chairman.

Curator Bonis.—An officer appointed by the Court, on application to that effect, to take care of the property of persons who through minority or insanity are unable to manage or superintend it.

Days.—(See "Clear Days," *ante*, p. 17).

Debate.—A formal discussion or argument of some question usually of public interest in a legislative or other assembly on a specific matter for the consideration and vote of the meeting.

De facto.—In fact, opposed to *de jure*, of right.

Defamatory Statement is a statement which exposes a person to hatred, ridicule, or contempt, or which causes him to be shunned or avoided, or which has a tendency to injure him in his office, profession, or trade, i.e. a statement which tends to rob a person of his good name.

De jure.—By right.

Discussion is the ventilation of a question or subject in which the matter is treated generally from different sides where there is no specific question before the meeting for its consideration and vote, e.g. when the Lord Chancellor in the House of Lords called

attention to and discussed generally the action of Lord Carson in taking part in political controversy.

Disqualification.—A person may be disqualified from being a member of a statutory body, *inter alia*, for absence from meetings, by bankruptcy or composition with creditors, by share or interest in contract or employment under that body, and by corrupt practices, and, in case of directors, by lunacy (see Table A, Clause 72).

Division.—The separation of members of legislative and other deliberative bodies into two groups in order to count their votes. This is often effected by their passing into separate lobbies, the numbers on each side being counted by tellers (*q.v.*).

Dropped Motions.—Motions which have been abandoned or allowed to lapse ; also applied to motions which have not been duly seconded.

E.g. (*exempli gratia*).—For example or instance.

Ejectment.—As a rule the chairman has the right to order the removal from a meeting of any disorderly members or persons.

En Bloc (Fr.).—In a mass ; in a lump ; altogether.

Et seq. (*et sequens*).—And the following (pages).

Ex Officio.—By virtue of one's office or position.

Ex Parte Statement is a statement which presents an account of *one side* only of a question or matter.

Form of Proxy.—(See *post*, p. 359).

Guillotine—*i.e.* closure by compartments—is a method of limiting debate and accelerating business. By this closure certain periods of time are allotted by resolution of the House of Commons to the various portions and stages of a bill. At the expiration of each period of time, discussion, whether concluded or not, is closed and the majority carry that portion of the bill upon which the guillotine has fallen. The Speaker or Chairman has no discretion in refusing this form of closure. The guillotine is applied on occasions of great legislative importance under the pressure of shortness of session, and to overcome an obstinate resistance hardly distinguishable from obstruction.

Hands.—Every question is generally, in the first instance, decided by a show of hands, which may be followed by a division or poll if demanded there and then.

Hour of Meeting refers to Greenwich time, except when *summer time* is in operation.

In Camera.—In private committee, not open to the public.

In Ex enso.—In full ; at full length.

Inter Alia.—Among other things.

Inter Se.—Between ourselves or themselves.

Intra Vires.—Within its powers, as opposed to *ultra vires* (*q.v.*).

Ipsa Facto.—By the fact itself ; thereby.

Kangaroo refers to the method by which the chairman of committees of the House of Commons is at times empowered to select which amendments shall be discussed, and thus, in practice, the debate jumps from one selected amendment to another, all intervening ones being omitted. The chairman can declare that certain amendments are frivolous, and thus can take a big jump sometimes over a page of amendments until he reaches one which he deems worth considering. This power of jumping has suggested the name of kangaroo, and dates from a standing order of July, 1909.

Locus Standi.—The right of a party to appear and to be heard on the question before any tribunal.

Majority.—The greater number or part ; a number which is more than half the whole number ; the larger party voting together in any deliberative or legislative assembly. Where a certain number are incorporated, a major part of them may do any corporate act, though nothing be mentioned in the charter (*Attorney-General v. Davy*, 1741, 2 Atk. 212). Questions are generally decided by a simple majority, unless the statute or regulations require a larger proportion.

Major Pars.—The major or greater part, *i.e.* the majority.

Major et Sanior Pars.—The greater and more intelligent or more influential part (of the assembly).

Mala Fides.—Bad faith.

Meetings, Packing of.—The selection or making of any voting body in such a way as to secure a partial decision or promote some private or party ends.

Minutes.—A record in summary form of the proceedings at a meeting of a corporation, company, society, or committee. Minutes of meetings of shareholders may fairly be open to the inspection of members, but *not* minutes of board meetings, which should not be accessible to any but the directors, the secretary, and auditors, who are entitled to see them for the purpose of audit.

Month.—In every Act passed after 1850, "month" means *calendar* month, unless the contrary appears (Section 3, Interpretation Act, 1889) ; but the word "month" in articles of association, apart from provision to the contrary in the articles, means *lunar* month (*Bruner v. Moore*, 1904, 1 Ch. 305). When a calendar month's notice was required by the rules of a friendly society, a lunar month's notice, even if reasonable, was held insufficient (*Orton v. Bristow*, 1915, 32 T. L. R. 129).

Motion.—A proposition or proposal formally made in a deliberative assembly [Murray]. When a motion is once before the meeting it can, as a rule, only be withdrawn before a decision is taken thereon, with the consent of the members present. A motion, when proposed and seconded, becomes a resolution, and when put to the meeting is called “the question.”

Mutatis Mutandis.—With the necessary alterations or changes in points of detail.

Negative.—Any merely negative alteration in a motion is not an amendment.

Nem. Con. (nemine contradicente).—Without opposition or contradiction; no one speaking in opposition; without contradiction.

Nem. Diss. (nemine dissentiente).—No one dissenting; without a dissenting voice.

Next Business.—One of the methods of interrupting discussion upon an original question is the moving and seconding of the following motion:—“That the council do proceed to the next business.”

Omnibus Resolution.—A resolution containing a large number of items or particulars.

One Man, one Vote.—Upon a show of hands, each person holding up his hand counts for one vote, though he may be entitled to more than one vote should there be division or poll.

Onus.—Burden; responsibility.

Open Voting.—*I.e.* voting in public as contrasted with ballot voting (*q.v.*).

Order.—Regular or customary mode of procedure at public meetings.

Order of Business.—(1) The order in which the business is to be transacted generally as set out in the agenda, or the order prescribed in the notice convening the meeting. (2) The order in which the various matters should be dealt with at a meeting. Usually they are shown on the agenda, and are taken in the order in which they appear there, unless a resolution to vary the procedure is adopted.

Order of the Day.—The business set down for debate on a particular day.

Order, Points of, are questions raised with the view of calling attention to any departure from the prescribed or customary modes of proceeding in debates and discussion, or in the conduct of deliberative or legislative bodies and public meetings, and may be raised at any time without notice.

Parol.—An oral statement or declaration ; *by parol*, i.e. by word of mouth.

Plenary Power.—Possessing full power or authority.

Point, The.—The precise matter in discussion or to be discussed.

Points of Order, which are to be addressed to the chairman and decided by him, may comprise any of the following :—

1. Use of improper, offensive, or irrelevant language.
2. Quorum not present.
3. Motion is *ultra vires* ; or is not within the scope of the notice given.
4. No question before the meeting—*e.g.* motion which has not been duly seconded ; if so required by the articles.
5. Generally, any irregularity or informality of proceedings.

Poll.—The word “ poll ” essentially signifies *head*, and so in its application means the whole body of an electorate. At a meeting a counting of heads is sometimes effected by a show of hands ; the voting at an election ; the counting of votes ; the numerical result of the voting ; the action or time and place of voting. A poll is generally taken by a division or by ballot.

Post (after) refers to a subsequent passage or page.

Postponement of a company meeting is not permissible unless there is an express provision to that effect in the articles. The proper course is to hold the meeting and adjourn it to another day.

Power of Attorney or letter of attorney.—A writing authorising another person called the attorney of the person appointing him to do any lawful act in the stead of another.

Précis.—A brief statement of the chief matters of a document.

Previous Question.—The question whether a vote should be taken on the main question or issue, moved before the main question is put. It is generally put in the form “ That the question be not now put,” which, if carried, gets rid of the original question. If the previous question is negatived, the main question must be put at once. It is suggested that this motion is so called because it is dealt with *previous* to the original question.

Primâ Facie.—At the first view or sight.

Privilege.—A right, advantage, or immunity granted to or enjoyed by a person, or a body or class of persons, beyond the common advantage of others.

Question.—A resolution which is put to the meeting for its decision thereon.

Q.V. (*quod vide*).—Which see.

Qua.—As ; in the character of ; by virtue of being.

Requisition.—The action of formally calling upon someone to perform some action—*e.g.* calling a meeting ; also a written demand of this nature.

Rescission of Resolutions.—It is generally provided that no resolution can be rescinded unless a certain notice has been given to the members of the body which passed it, from which it follows that a resolution cannot be rescinded at the same meeting at which it was passed. In the absence of such provision, it is undesirable that a resolution should be rescinded without proper notice.

Resolution.—A formal decision, determination, or expression of opinion on the part of a deliberative assembly or other meeting ; a proposal of this nature submitted to an assembly or meeting (Murray) ; a proposition or motion which has been duly seconded. To avoid confusion and misapprehension, all resolutions should be in writing, and should commence with the word "That."

Rider.—An additional clause tacked on to a document after its first drafting, especially a supplementary and amending clause attached to a legislative bill on its final reading ; a clause added as a corollary to a verdict ; a clause added to a motion.

Riot.—In order to constitute a riot five elements are necessary ; (1) a number of persons not less than three ; (2) a common purpose ; (3) execution or inception of the common purpose ; (4) an intent on the part of the number of persons to help one another, by force if necessary, against any person who may oppose them in the execution of the common purpose ; (5) force or violence, not merely used in or about the common purpose, but displayed in such a manner as to alarm at least one person of reasonable firmness and courage (*Field v. Receiver of Metropolitan Police*, 1907, 2 K. B. 853).

The Riot Act, 1715, provides that if 12 rioters continue together for an hour after a magistrate has made a proclamation to them, in the terms of the Act, ordering them to disperse, he may command the troops to fire upon the rioters or charge them sword in hand. It is erroneously supposed that the military cannot be employed without the fulfilment of the conditions imposed by the statute ; therefore the reading of the proclamation, commonly but wrongly called "reading the Riot Act," is not essential to constitute a riot. The occasion on which force can be employed, and the kind and degree of force which it is lawful to use in order to put down a riot, are determined by nothing else than the necessity of the case (*Dicey, Law of the Constitution*).

Senior Pars.—The more intelligent or sensible part (of an assembly).

Scrutineer.—One who examines the votes given at an election for the purpose of counting the poll.

Second Speech.—As a rule each person (other than the mover) is allowed one speech upon each separate motion, but in committee this rule is not rigidly adhered to.

Semble.—It seems ; used in reports of cases to show that a point is not decided directly, but may be inferred from the decision.

Seriatim.—In a series or order.

Service by Post.—Section 26 of Interpretation Act, 1889, provides that "where an Act passed after the commencement of this Act authorises or requires any document to be served by post, whether the expression 'serve' or the expression 'give' or 'send' or any other expression is used, then, unless the contrary intention appears, the service shall be deemed to be effected by properly addressing, prepaying, and posting a letter containing the document, and, unless the contrary is proved to have been effected at the time at which the letter would be delivered in the ordinary course of post." Articles sometimes provide that the day of posting the notice, or the following day, shall be considered the day of service.

Sine Die.—Without (appointing) a day ; indefinitely. A meeting adjourned *sine die* thus requires a fresh notice for the adjournment.

Sotto Voce.—In an undertone ; speaking in an aside.

Speaking to Order.—Appealing to the chairman on points of order (*q.v.*), which may be done by a person forthwith even though he has spoken before ; but the point must be taken at once without debate.

Specialty Debt.—A debt arising out of a contract under seal, the right of action in which extends for twenty years.

Status Quo.—The existing state of things at a given time or date.

Sub-committee is a body of persons appointed by a committee for certain specific purposes. Its report must be presented to the appointing committee.

Substantive Motion.—Of the nature of or equivalent to a motion ; a motion which is not dependent upon subsidiary matters or referable to anything else, *i.e.* an independent motion.

Teller.—One who tells or counts votes ; one or two or more persons members of a deliberative or legislative body, appointed when a division takes place, to count the votes cast for and against a particular proposal or measure ; in the House of Commons there are two tellers appointed for each party.

Time.—Unless otherwise stated, where any expression of time occurs in any act, deed, or document, the time refers to Greenwich mean time (Statutes (Definition of Time) Act, 1880 (43 & 44 Vict. c. 9) ; amended by Time (Ireland) Act, 1916). The Summer Time Act, 1922, provides that the time for general purposes shall be one hour in advance of Greenwich mean time during the time summer time is in operation. The Act of 1922 was made permanent by the Summer Time Act, 1925.

Ultra Vires (beyond their powers) —A company is said to act *ultra vires* when it exceeds the authority imparted to it by its memorandum of association or Act of Parliament

Unan., unanimously, *unā voce*, with one voice, unanimously.

Universitas.—The whole assembly or corporation

Vice versa.—The reverse, the terms being exchanged.

Woman Chairman.—A single or married woman can be elected chairman if properly qualified. The method of addressing a woman in the Chair varies. She is sometimes addressed as "Mr Chairman," more usually "Madam Chairman," she is also referred to in the course of the proceedings variously as "Sir" and "Madam." In the House of Commons a chairman is always addressed by name and not as "Mr Chairman." It is the tradition and practice of the London County Council to address a woman in the Chair as "Mr. Chairman" and "Sir." The Council takes the view that it is the Chair which is being addressed and not the sex of its occupant. This practice is in accordance with the wishes of Mrs E M Lowe, the first woman Chairman of the London County Council (see *The Times*, 15th March, 1939)

APPENDIX II

LOCAL AUTHORITIES (ADMISSION OF THE
PRESS TO MEETINGS) ACT, 1908

[8 EDW. VII, CH. 43.]

**An Act to provide for the Admission of Representatives of
the Press to the Meetings of certain Local Authorities.****[21st December, 1908.]**

1. Representatives of the press shall be admitted to the meetings of every local authority: Provided that a local authority may temporarily exclude such representatives from a meeting as often as may be desirable at any meeting when, in the opinion of a majority of the members of the local authority present at such meeting, expressed by resolution, in view of the special nature of the business then being dealt with or about to be dealt with, such exclusion is advisable in the public interest.

2. For the purposes of this Act the expression " local authority " means—

- (a) A council of a county, county borough, borough (including a metropolitan borough), urban district, rural district, or parish, and a joint committee or joint board of any two or more such councils to which any of the powers or duties of the appointing councils may have been transferred or delegated under the provisions of any Act of Parliament or Provisional Order; and a parish meeting under the provisions of the Local Government Act, 1894;
- (b) An education committee and a joint education committee, established under Section seventeen of the Education Act, 1902, so far as respects any acts or proceedings which are not required to be submitted to the council or councils for its or their approval;
- (c) A board of guardians, and a joint committee constituted in pursuance of Section eight of the Poor Law Act, 1879, and the board of management of any school or asylum district formed under any of the Acts relating to the relief of the poor;
[Sect. 8 of the Act of 1879 was repealed by the Poor Law Act, 1927.]
- (d) A central body and a distress committee under the Unemployed Workmen Act, 1905;
[The Act of 1905 was repealed by the Local Government Act, 1929, s. 12.]
- (e) The Metropolitan Water Board and a joint water board constituted under the provisions of any Act of Parliament or Provisional Order;

- (f) Any other local body which has, or may hereafter have, the power to make a rate.

The expression "rate" means a rate the proceeds of which are applicable to public local purposes, and leviable on the basis of an assessment in respect of property, and includes any sum which, though obtained in the first instance by a precept, certificate, or other document requiring payment from some authority or officer, is or can be ultimately raised out of a rate.

The expression "representatives of the press" means duly accredited representatives of newspapers and duly accredited representatives of news agencies which systematically carry on the business of selling and supplying reports and information to newspapers.

3. This Act shall not extend to any meeting of a committee of a local authority, as defined for the purposes of this Act, unless the committee is itself such an authority.

4. Nothing in this Act shall be construed so as to prohibit a committee of a local authority from admitting representatives of the press to its meetings.

5. Nothing in this Act shall be construed so as to prohibit a local authority from admitting the public to its meetings.

6. In the application of this Act to Scotland—

- (1) The expression "local authority" means—

(a) A county council, a town council, a parish council, a school board, and a district committee constituted under the Local Government (Scotland) Acts ;

(b) A central body, and a distress committee under the Unemployed Workmen Act, 1905 ;

(c) Any other local body, board, joint board, or committee which has or may hereafter have the power to impose a rate as defined in Section two of this Act and which does not require to report its proceedings to any other local authority.

- (2) The definition of the expression "local authority" in Section two of this Act, shall not apply to Scotland.

7. (1) This Act may be cited as "The Local Authorities (Admission of the Press to Meetings) Act, 1908."

- (2) This Act shall not extend to Ireland.

APPENDIX III

FREE SPEECH AND BLASPHEMY *

THE law affecting blasphemy may be shortly stated as follows : " The common law of England, which is only common reason or usage, knows of no prosecution for mere opinions " (Evans *v.* Chamberlain of London, 1767, 2 Burns Ecc. Law, 217). Blasphemy is made an offence because it may bring about a breach of the peace (*R. v. Boulter*, *post*, p. 335), and consists of scurrilous and irreverent ridicule, or impugning the Christian religion in such a way as to outrage the feelings of any sympathiser with Christianity (*R. v. Gott*, *post*, p. 336). Ridicule and sarcasm are legitimate weapons, but not scurrility, offensive levity or abuse.

If the decencies of controversy are observed, even fundamentals of religion may be attacked without a person being guilty of blasphemous libel. The mere denial of the truth of Christianity is not blasphemy (*R. v. Ramsay and Foote*, *post*, p. 334).

Mr. Justice Fitzjames Stephen in 1882 wrote : " To say that the crime of blasphemy lies in the manner and not in the matter appears to me to be an attempt to evade or explain away a law which has no doubt ceased to be in harmony with the temper of the times. It is unquestionably true that in the course of the last thirty—but especially in the course of the last twenty—years open avowals of disbelief in the truth of both natural and revealed religion have become so common that they have ceased to attract attention. I do not think any one has been convicted of blasphemy in modern times for a mere decent expression of disbelief in Christianity."—*Law Times*, 29th November, 1913.

In *R. v. Tunbridge* (1822, 1 St. Tr., N. S., pp. 1369-70) it was held that justification of a blasphemy cannot be pleaded, nor may a defence be a vehicle for the very crime for which a defendant is charged. And in *R. v. Williams* (1797, 26 Howell, St. Tr., at p. 716) " offences of this kind (*i.e.* blasphemy) are . . . crimes against the law of the land, inasmuch as they tend to destroy those obligations whereby civil society is bound together ; and it is upon this ground that the Christian religion constitutes part of the law of England."

" I have no doubt, therefore, that the mere denial of the truth of Christianity is not enough to constitute the offence of blasphemy. It is my duty to lay down the law on the subject as I find it laid down in the best books of authority, and in *Starkie on Libel*

* A Bill was introduced by the title " The Blasphemy Laws (Amendment) Bill, 1926," on February 22nd, 1926, which sought to provide that no criminal proceedings should be instituted in any court against any person for schism, heresy, blasphemy, blasphemous libel, or atheism. The Bill was read a second time but was subsequently dropped.

(599, 4th edition) it is there laid down as, I believe, correctly : ‘ There are no questions of more intense and awful interest than those which concern the relations between the Creator and the beings of His creation ; and though, as a matter of discretion and prudence, it might be better to leave the discussion of such matters to those who, from their education and habits, are most likely to form correct conclusions, yet it cannot be doubted that any man has a right not merely to judge for himself on such subjects, but also, legally speaking, to publish his opinion for the benefit of others. When learned and acute men enter upon these discussions with such laudable motives their very controversies, even where one of the antagonists must necessarily be mistaken, must in general tend to the advancement of truth, and the establishment of religion on the firmest and most stable foundation. The very absurdity and folly of an ignorant man who professes to teach and enlighten the rest of mankind are usually so gross as to render his errors harmless ; but, be this as it may, the law interferes not with his blunders, so long as they are honest ones, justly considering that society is more than compensated for the partial and limited mischief which may arise from the mistaken endeavours of honest ignorance, by the splendid advantages which result to religion and truth from the exertions of free and unfettered minds. It is the mischievous abuse of this state of intellectual liberty which calls for penal censure. The law visits not the honest errors, but the malice of mankind. A wilful intention to pervert, insult, and mislead others by means of licentious and contumelious abuse applied to sacred objects, or by wilful misrepresentations or wilful sophistry, calculated to mislead the ignorant and unwary, is the criterion and test of guilt. A malicious and mischievous intention, or what is equivalent to such an intention in law as well as morals—a state of apathy and indifference to the interests of society—is the broad boundary between right and wrong.’ . . . If the decencies of controversy are observed, even the fundamentals of religion may be attacked without the writer being guilty of blasphemy ” (Rex v. Ramsey and Foote, 1883, 15 Cox C. C., p. 236).

“ A man was free to think, to say, and to teach that which he pleased about religious matters, though not about morals. But when they came to consider whether he had exceeded the permitted limits they must not forget the place where he spoke and the people to whom he spoke. A man was not free in a public place, where passers-by, who did not go willingly to listen to him, knowing what he was going to say, should accidentally hear his words ; or where young people might be present, a man was not free in such a place to use coarse ridicule on subjects which were sacred to the great majority of persons in this country. He was free to put forward arguments. The jury must draw the line, and probably would draw it in favour of the man accused if he was really arguing for a honest belief in a doctrine or non-doctrine to which he was attached, and

he would not be convicted of blasphemous libel; but if not for argument, he was making a coarse and scurrilous attack on doctrines which the majority of people held to be true, in a public place, where passers-by might have their ears offended, and where young people might come, he would render himself amenable to the law of blasphemous libel. Such language might also tend to provoke a breach of the peace" (*R. v. Boulter, Times*, 7th February, 1908; see also 72 J. P. 188).

Rex v. Stewart (Leeds Assizes, 5th December, 1911) followed the two foregoing cases, and in the summing up to the jury it was stated that the law of blasphemy had altered considerably of recent years. People were now allowed entire freedom of thought and expression so long as the expression was given vent to in what might be termed a decent way. It must not, however, be an abusive, malicious attack upon things which were sacred to a large majority of the people, delivered in a public place where such people would be passing. They must not be thin-skinned, because they must recollect that people might have, perfectly honestly, vulgar ideas and a very vulgar way of expressing themselves. They might also be addressing vulgar people, and they might want to put it into a language which would be understood by such people. They had nothing whatever to do with the question of whether it was wise or not to prosecute for blasphemy.

In *Rex v. Stewart* (Staffordshire Assizes, 17th and 18th November, 1913) it was said in the course of the summing up to the jury, that the difficulty in cases of that kind is that all ancient precedents have, to a large extent, been abrogated by the course of time. There have been prosecutions for blasphemy in the old days which we in our day should recognise as infractions of the liberty of speech. But we have got wiser, larger minded, and more tolerant as the ages have rolled on, and our view nowadays is inclined to the opinion that free discussion will elicit the truth, and that anything that cannot stand free discussion is not worth protecting by law from such free discussion. It was a curious thing that one might attack any other religion, such as Mohammedanism or Judaism, in the most blasphemous language, and the law would hold one harmless, but in regard to Christianity the law was different. Even now, however, one might in speech or in writing attack the very fundamentals of the Christian faith without by so doing offending against any Christian law. The honest expression of opinion cannot now be touched by the criminal law. There is nothing sacred from honest discussion—Christianity, the Monarchy, sexual relations—everything may be openly discussed and without crime if you keep within the limits of what is not blasphemous and indecent. There was only one limit to this absolute freedom of discussion of the fundamentals of Christianity, and it was this: the religious feelings of all classes must be protected against outrage and insult. A man might suffer from almost insane vanity and from almost

incurable vulgarity, but if he sets out to criticise with the honest intention of arriving at the truth he is not to be condemned merely because his language is that of a vain-glorious person and coarse and vulgar. The test is, Was it language used in honest discussion ; although coarse and vulgar, was it used in honest discussion of the fundamentals of Christianity, or was it used to outrage and insult and ridicule the feelings of others—to scandalise, and not to prove false the doctrine he was discussing ? There was a great difference between impugning the truths and doctrines of a religion and offending by coarse mockery the feelings of those who upheld those doctrines.

In *Rex v. Gott* (Birmingham Assizes, 11th and 14th July, 1917) it was said that nobody nowadays wanted to limit the freedom of belief, and a man was free to express in words and teach his belief so long as he did so decently and not in a way intended to shock or insult believers.

In *R. v. Gott* (1922, 16 Cr. App. Cas. 87) it was held that the offence of blasphemy may be committed by written as well as spoken words. The essence of the crime consisted in the publication of words concerning the Christian religion so scurrilous and offensive as to pass the limits of decent controversy, and to be calculated to outrage the feelings of any sympathiser with Christianity. In considering whether these limits have been passed, the circumstances in which the words were published should be taken into account. The limits of decent controversy would certainly be passed if the circumstances in which the words were published were such that the publication was likely to lead to a breach of the peace.

A society was registered as a company limited by guarantee. The main object of the company, as stated in its memorandum of association, was to "promote the principle that human conduct should be based upon natural knowledge, and not upon supernatural belief, and that human welfare in this world is the proper end of all thought and action." It was held, assuming that this object involved a denial of Christianity, (1) that it was not criminal, inasmuch as the propagation of anti-Christian doctrines, apart from scurrility or profanity, did not constitute the offence of blasphemy ; and (2) that it was not illegal in the sense of rendering the company incapable in law of acquiring property by gift, and that a bequest "upon trust for the Secular Society Limited" was valid (*Bowman v. Secular Society*, 1917, A.C. 406). "The authorities are sufficient to establish that the first object of the society's memorandum is not open to objection as contrary to the policy of the law. It is not illegal, for it does not involve blasphemy. It is not irreligious, for it is at any rate consistent with that negative deism which was held not to be irreligious in *Pare v. Clegg* (1861, 29 Beav. 589). It is not immoral or seditious. It is, no doubt, anti-Christian, but . . . there is nothing unlawful at common law in reverently doubting or, denying doctrines parcel of Christianity, however fundamental. It

would be difficult to draw a line in such matters according to perfect orthodoxy, or to define how far one might depart from it in believing or teaching without offending the law. The only safe, and, as it seems to me, practical rule is that which depends on the sobriety and reverence and seriousness with which the teaching or believing, however erroneous, is maintained " (*ibid.*, p. 452).

APPENDIX IV

THE COMPANIES ACT, 1929 (TABLE A)

THE regulations contained in the First Schedule (known as Table A) apply only to those companies registered under the Companies Act which have no special articles of their own dealing with the same matters. Most companies of any importance do, however, provide themselves with special articles—founded in the main upon Table A, but permitting of very considerable alterations in details; so that for all such companies the special articles must be consulted, and Table A can only be regarded as a probable guide to the regulations by which such companies are controlled.

ARTICLES OF ASSOCIATION

APPLICATION OF TABLE A

Section 8 of the Act provides:—

(1) Articles of Association may adopt all or any of the regulations contained in Table A.

(2) If articles are not registered, or, if articles are registered, in so far as the articles do not exclude or modify the regulations contained in Table A, those regulations shall, so far as applicable, be the regulations of the company in the same manner and to the same extent as if they were contained in duly registered articles.

The articles are the source of authority for all matters dealing with meetings, save only that where the articles are silent, common law rules prevail if Table A is expressly excluded. Articles may modify, supersede, or even abrogate common law rules.

TABLE A:

REGULATIONS AS TO MEETINGS AND ARRANGEMENTS OF
A COMPANY LIMITED BY SHARES.*General Meetings.*

3. If at any time the share capital is divided into different classes of shares, the rights attached to any class (unless otherwise provided by the terms of issue of the shares of that class) may be varied with the consent in writing of the holders of three-fourths of the issued shares of that class, or with the sanction of an extraordinary resolution passed at a separate general meeting of the holders of the shares of the class. To every such separate general meeting the provisions of these regulations relating to general meetings shall *mutatis mutandis* apply, but so that the necessary quorum shall be two persons at least holding or representing by proxy one-third of the issued shares of the class and that any holder of shares of the class present in person or by proxy may demand a poll.

39. A general meeting shall be held once in every calendar year at such time (not being more than fifteen months after the holding of the last preceding general meeting) and place as may be prescribed by the company in general meeting, or, in default, at such time in the third month following that in which the anniversary of the company's incorporation occurs, and at such place as the directors shall appoint. In default of a general meeting being so held, a general meeting shall be held in the month next following, and may be convened by any two members in the same manner as nearly as possible as that in which meetings are to be convened by the directors.

40. The above-mentioned general meetings shall be called ordinary general meetings; all other general meetings shall be called extraordinary general meetings.

41. The directors may, whenever they think fit, convene an extraordinary general meeting, and extraordinary general meetings shall also be convened on such requisition, or, in default, may be convened by such requisitionists, as provided by section 114 of the Act. If at any time there are not within the United Kingdom sufficient directors capable of acting to form a quorum, any director or any two members of the company may convene an extraordinary general meeting in the same manner as nearly as possible as that in which meetings may be convened by the directors.

Notice of general meetings.

42. Subject to the provisions of Section 117 (2) of the Act relating to special resolutions, seven days' notice at the least (exclusive of the day on which the notice is served or deemed to be served, but inclusive of the day for which notice is given) specifying the place, the day, and the hour of meeting and, in case of special business, the general nature of that business shall be given in manner hereinafter mentioned, or in such other manner, if any, as may be prescribed by the company in general meeting, to such persons as are, under the regulations of the company, entitled to receive such notices from the company, but with the consent of all the members entitled to receive notice of some particular meeting, that meeting may be convened by such shorter notice and in such manner as those members may think fit.

43. The accidental omission to give notice of a meeting to, or the non-receipt of notice of a meeting by, any members shall not invalidate the proceedings at any meeting.

Proceedings at general meetings.

44. All business shall be deemed special that is transacted at an extraordinary meeting, and all that is transacted at an ordinary meeting, with the exception of sanctioning a dividend, the con-

sideration of the accounts, balance sheets, and the ordinary report of the directors and auditors, the election of directors and other officers in the place of those retiring by rotation, and the fixing of the remuneration of the auditors.

45. No business shall be transacted at any general meeting unless a quorum of members is present at the time when the meeting proceeds to business ; save as herein otherwise provided, three members personally present shall be a quorum.

46. If within half an hour from the time appointed for the meeting a quorum is not present, the meeting, if convened upon the requisition of members, shall be dissolved ; in any other case it shall stand adjourned to the same day in the next week, at the same time and place, and, if at the adjourned meeting a quorum is not present within half an hour from the time appointed for the meeting the members present shall be a quorum.

47. The chairman, if any, of the board of directors shall preside as chairman at every general meeting of the company.

48. If there is no such chairman, or if at any meeting he is not present within fifteen minutes after the time appointed for holding the meeting or is unwilling to act as chairman, the members present shall choose some one of their number to be chairman.

49. The chairman may, with the consent of any meeting at which a quorum is present (and shall if so directed by the meeting), adjourn the meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place. When a meeting is adjourned for ten days or more, notice of the adjourned meeting shall be given as in the case of an original meeting. Save as aforesaid, it shall not be necessary to give any notice of an adjournment or of the business to be transacted at an adjourned meeting.

50. At any general meeting a resolution put to the vote of the meeting shall be decided on a show of hands, unless a poll is (before or on the declaration of the result of the show of hands) demanded by at least three members present in person or by proxy entitled to vote or by one member or two members so present and entitled, if that member or those two members together hold not less than 15 per cent. of the paid-up capital of the company, and, unless a poll is so demanded, a declaration by the chairman that a resolution has, on a show of hands, been carried, or carried unanimously, or in a particular majority, or lost, and an entry to that effect in the book of the proceedings of the company, shall be conclusive evidence of the fact, without proof of the number or proportion of the votes recorded in favour of, or against, that resolution.

51. If a poll is duly demanded, it shall be taken in such manner as the chairman directs, and the result of the poll shall be deemed to be the resolution of the meeting at which the poll was demanded.

52. In the case of an equality of votes, whether on a show of hands or on a poll, the chairman of the meeting at which the show of hands takes place or at which the poll is demanded, shall be entitled to a second or casting vote.

53. A poll demanded on the election of a chairman, or on a question of adjournment, shall be taken forthwith. A poll demanded on any other question shall be taken at such time as the chairman of the meeting directs.

Votes of members.

54. On a show of hands every member present in person shall have one vote. On a poll every member shall have one vote for each share of which he is the holder.

55. In the case of joint holders the vote of the senior who tenders a vote, whether in person or by proxy, shall be accepted to the exclusion of the votes of the other joint holders; and for this purpose seniority shall be determined by the order in which the names stand in the register of members.

56. A member of unsound mind, or in respect of whom an order has been made by any court having jurisdiction in lunacy, may vote, whether on a show of hands or on a poll, by his committee, *curator bonis*, or other person in the nature of a committee or *curator bonis* appointed by that court, and any such committee, *curator bonis*, or other person may, on a poll, vote by proxy.

57. No member shall be entitled to vote at any general meeting unless all calls or other sums presently payable by him in respect of shares in the company have been paid.

58. On a poll votes may be given either personally or by proxy.

59. The instrument appointing a proxy shall be in writing under the hand of the appointor or of his attorney duly authorised in writing, or, if the appointor is a corporation, either under the seal, or under the hand of an officer or attorney so authorised. A proxy need not be a member of the company.

60. The instrument appointing a proxy and the power of attorney or other authority, if any, under which it is signed or a notarially certified copy of that power or authority shall be deposited at the registered office of the company not less than forty-eight hours before the time for holding the meeting, or adjourned meeting, at which the person named in the instrument proposes to vote, and in default the instrument of proxy shall not be treated as valid.

61. An instrument appointing a proxy may be in the following form, or any other form which the directors shall approve :

COMPANY, LIMITED.

" I, _____ of _____, in the
County of _____, being a member of the
COMPANY, LIMITED, hereby appoint _____,
of _____, as my proxy to vote for me and on my
behalf at the [ordinary or extraordinary, *as the case may be*]
general meeting of the company to be held on the _____ day
of _____, and at any adjournment thereof."

Signed this _____ day of _____

62. The instrument appointing a proxy shall be deemed to confer authority to demand or join in demanding a poll.

Corporations acting by representatives at meetings.

63. Any corporation which is a member of the company may by resolution of its directors or other governing body authorise such person as it thinks fit to act as representative at any meeting of the company or of any class of members of the company, and the person so authorised shall be entitled to exercise the same powers on behalf of the corporation which he represents as that corporation could exercise if it were an individual member of the company.

Directors.

64. The number of the directors and the names of the first directors shall be determined in writing by a majority of the subscribers of the Memorandum of Association.

65. The remuneration of the directors shall from time to time be determined by the company in general meeting.

66. The qualification of a director shall be the holding of at least one share in the company.

Powers and duties of directors.

67. The business of the company shall be managed by the directors, who may pay all expenses incurred in getting up and registering the company, and may exercise all such powers of the company as are not, by the Act or by these Articles, required to be exercised by the company in general meeting, subject, nevertheless, to any regulation of these Articles, to the provisions of the Act, and to such regulations, being not inconsistent with the aforesaid regulations or provisions, as may be prescribed by the company in general meeting; but no regulation made by the company in general meeting shall invalidate any prior act of the directors which would have been valid if that regulation had not been made.

68. The directors may from time to time appoint one or more of their body to the office of managing director or manager for such term, and at such remuneration (whether by way of salary, or commission, or participation in profits, or partly in one way and partly in another) as they may think fit, and a director so appointed shall not, while holding that office, be subject to retirement by rotation, or taken into account in determining the rotation or retirement of directors; but his appointment shall be subject to determination *ipso facto* if he ceases from any cause to be a director, or if the company in general meeting resolve that his tenure of the office of managing director or manager be determined.

69. The amount for the time being remaining undischarged of moneys borrowed or raised by the directors for the purposes of the company (otherwise than by the issue of share capital) shall not at any time exceed the issued share capital of the company without the sanction of the company in general meeting.

70. The directors shall cause minutes to be made in books provided for the purpose—

- (a) Of all appointments of officers made by the directors;
- (b) Of the names of the directors present at each meeting of the directors and of any committee of the directors.
- (c) Of all resolutions and proceedings at all meetings of the company, and of the directors, and of committees of directors.

And every director present at any meeting of directors or committee of directors shall sign his name in a book to be kept for that purpose.

The seal.

71. The seal of the company shall not be affixed to any instrument except by the authority of a resolution of the board of directors, and in the presence of a director and of the secretary or such other person as the directors may appoint for the purpose; and that director and the secretary or other person as aforesaid shall sign every instrument to which the seal of the company is so affixed in their presence.

Disqualification of directors.

72. The office of director shall be vacated, if the director—

- (a) Ceases to be a director by virtue of Section 141 of the Act; or
- (b) Without the consent of the company in general meeting holds any other office of profit under the company except that of managing director or manager; or
- (c) Becomes bankrupt; or
- (d) Becomes prohibited from being a director by reason of any order made under Sections 217 or 275 of the Act; or

- (e) Is found lunatic or becomes of unsound mind ; or
- (f) Resigns his office by notice in writing to the company ; or
- (g) Is directly or indirectly interested in any contract with the company or participates in the profits of any contract with the company.

Provided, however, that a director shall not vacate his office by reason of his being a member of any corporation which has entered into contracts with or done any work for the company if he shall have declared the nature of his interest in manner required by section 149 of the Act ; but the director shall not vote in respect of any such contract or work, or any matter arising thereout, and if he does so vote his vote shall not be counted.

Rotation of directors.

73. At the first ordinary general meeting of the company the whole of the directors shall retire from office, and at the ordinary general meeting in every subsequent year one-third of the directors for the time being, or, if their number is not three or a multiple of three, then the number nearest to one-third, shall retire from office.

74. The directors to retire in every year shall be those who have been longest in office since their last election, but as between persons who became directors on the same day those to retire shall (unless they otherwise agree among themselves) be determined by lot.

75. A retiring director shall be eligible for re-election.

76. The company at the general meeting at which a director retires in manner aforesaid may fill up the vacated office by electing a person thereto, and in default the retiring director shall be deemed to have been re-elected unless at such meeting it is resolved not to fill up such vacated office.

77. The company may from time to time in general meeting increase or reduce the number of directors, and may also determine in what rotation the increased or reduced number is to go out of office.

78. Any casual vacancy occurring in the board of directors may be filled up by the directors, but the person so chosen shall be subject to retirement at the same time as if he had become a director on the day on which the director in whose place he is appointed was last elected a director.

79. The directors shall have power at any time, and from time to time, to appoint a person as an additional director who shall retire from office at the next following ordinary general meeting, but shall be eligible for election by the company at that meeting as an additional director.

80. The company may by extraordinary resolution remove any director before the expiration of his period of office, and may by an ordinary resolution appoint another person in his stead. The person so appointed shall be subject to retirement at the same time as if he had become a director on the day on which the director in whose place he is appointed was last elected a director.

Proceedings of directors.

81. The directors may meet together for the despatch of business, adjourn, and otherwise regulate their meetings as they think fit. Questions arising at any meeting shall be decided by a majority of votes. In case of an equality of votes the chairman shall have a second or casting vote. A director may, and the secretary on the requisition of a director shall, at any time summon a meeting of the directors.

82. The quorum necessary for the transaction of the business of the directors may be fixed by the directors, and unless so fixed shall, when the number of directors exceeds three be three, and when the number of directors does not exceed three, be two.

83. The continuing directors may act notwithstanding any vacancy in their body, but, if and so long as their number is reduced below the number fixed by or pursuant to the regulations of the company as the necessary quorum of directors, the continuing directors may act for the purpose of increasing the number of directors to that number, or of summoning a general meeting of the company, but for no other purpose.

84. The directors may elect a chairman of their meetings and determine the period for which he is to hold office; but, if no such chairman is elected, or if at any meeting the chairman is not present within five minutes after the time appointed for holding the same, the directors present may choose one of their number to be chairman of the meeting.

85. The directors may delegate any of their powers to committees, consisting of such member or members of their body as they think fit; any committee so formed shall, in the exercise of the powers so delegated, conform to any regulations that may be imposed on it by the directors.

86. A committee may elect a chairman of its meetings: if no such chairman is elected, or if at any meeting the chairman is not present within five minutes after the time appointed for holding the same, the members present may choose one of their number to be chairman of the meeting.

87. A committee may meet and adjourn as they think proper. Questions arising at any meeting shall be determined by a majority of votes of the members present, and in case of an equality of votes the chairman shall have a second or casting vote.

88. All acts done by any meeting of the directors or of a committee of directors, or by any person acting as a director, shall, notwithstanding that it be afterwards discovered that there was some defect in the appointment of any such director or person acting as aforesaid, or that they or any of them were disqualified, be as valid as if every such person had been duly appointed and was qualified to be a director.

Dividends and reserve.

89. The company in general meeting may declare dividends, but no dividend shall exceed the amount recommended by the directors.

90. The directors may from time to time pay to the members such interim dividends as appear to the directors to be justified by the profits of the company.

91. No dividend shall be paid otherwise than out of profits.

92. Subject to the rights of persons, if any, entitled to shares with special rights as to dividends, all dividends shall be declared and paid according to the amounts paid on the shares, but if and so long as nothing is paid up on any of the shares in the company dividends may be declared and paid according to the amounts of the shares. No amount paid on a share in advance of calls shall, while carrying interest, be treated for the purposes of this article as paid on the share.

93. The directors may, before recommending any dividend, set aside out of the profits of the company such sums as they think proper as a reserve or reserves, which shall, at the discretion of the directors, be applicable for meeting contingencies, or for equalising dividends, or for any other purpose to which the profits of the company may be properly applied, and pending such application may, at the like discretion, either be employed in the business of the company or be invested in such investments (other than shares of the company) as the directors may from time to time think fit.

94. If several persons are registered as joint holders of any share, any one of them may give effectual receipts for any dividend or other moneys payable on or in respect of the share.

95. Any dividend may be paid by cheque or warrant sent through the post to the registered address of the member or person entitled thereto, or in the case of joint holders to any one of such joint holders at his registered address, or to such person and such address as the member or person entitled or such joint holders, as the case may be, may direct. Every such cheque or warrant shall be made payable to the order of the person to whom it is sent or to the order of such other person as the member or person entitled or such joint holders, as the case may be, may direct.

96. No dividend shall bear interest against the company.

Accounts.

97. The directors shall cause proper books of account to be kept with respect to—

All sums of money received and expended by the company and the matters in respect of which the receipt and expenditure take place ;

All sales and purchases of goods by the company ; and
The assets and liabilities of the company.

98. The books of account shall be kept at the registered office of the company, or at such other place or places as the directors think fit, and shall always be open to the inspection of the directors.

99. The directors shall from time to time determine whether and to what extent and at what times and places and under what conditions or regulations the accounts and books of the company or any of them shall be open to the inspection of members not being directors, and no member (not being a director) shall have any right of inspecting any account or book or document of the company except as conferred by Statute or authorised by the directors or by the company in general meeting.

100. The directors shall from time to time in accordance with Section 123 of the Act cause to be prepared and to be laid before the company in general meeting such profit and loss accounts, balance sheets, and reports as are referred to in that section.

101. A copy of every balance sheet (including every document required by law to be annexed thereto) which is to be laid before the company in general meeting, together with a copy of the auditors' report, shall, not less than seven days before the date of the meeting, be sent to the persons entitled to receive notices of general meetings of the company.

Audit.

102. Auditors shall be appointed and their duties regulated in accordance with Sections 132, 133, and 134 of the Act.

Notices.

103. A notice may be given by the company to any member either personally or by sending it by post to him to his registered address, or (if he has no registered address within the United Kingdom) to the address, if any, within the United Kingdom supplied by him to the company for the giving of notices to him.

Where a notice is sent by post, service of the notice shall be deemed to be effected by properly addressing, prepaying, and posting a letter containing the notice, and to have been effected in the case of a notice of a meeting at the expiration of twenty-four

hours after the letter containing the same is posted, and in any other case at the time at which the letter would be delivered in the ordinary course of post.

104. If a member has no registered address within the United Kingdom and has not supplied to the company an address within the United Kingdom for the giving of notices to him, a notice addressed to him and advertised in a newspaper circulating in the neighbourhood of the registered office of the company, shall be deemed to be duly given to him at noon on the day on which the advertisement appears.

105. A notice may be given by the company to the joint holders of a share by giving the notice to the joint holder named first in the register in respect of the share.

106. A notice may be given by the company to the persons entitled to a share in consequence of the death or bankruptcy of a member by sending it through the post in a prepaid letter addressed to them by name, or by the title of representatives of the deceased or trustee of the bankrupt, or by any like description, at the address, if any, within the United Kingdom supplied for the purpose by the persons claiming to be so entitled, or (until such an address has been so supplied) by giving the notice in any manner in which the same might have been given if the death or bankruptcy had not occurred.

107. Notice of every general meeting shall be given in some manner hereinbefore authorised to (a) every member except those members who (having no registered address within the United Kingdom) have not supplied to the company an address within the United Kingdom for the giving of notices to them, and also to (b) every person entitled to a share in consequence of the death or bankruptcy of a member, who, but for his death or bankruptcy, would be entitled to receive notice of the meeting. No other persons shall be entitled to receive notice of general meetings.

APPENDIX V

**FORMS OF NOTICES OF MEETINGS,
AGENDA PAPERS, AND MINUTES
as governed by The Companies Act, 1929**

By R. A. HUDSON, F.C.I.S.

1. Notices of board meetings

CLAUSE 81 of Table A, and the Articles of most companies, provide that "the directors may meet together for the dispatch of business, adjourn, and *otherwise regulate their meetings as they think fit.*"

This leaves it, of course, open to the directors to instruct the secretary from time to time as to their wishes in the matter of notices; or to *Resolve*—as is often done—that meetings of the board are to be held at regular intervals, "of which no notice shall be given."

Apart from such special instructions, the usual practice is to send a simple notice in the following form without specifying the business to be transacted:

JOHN JONES & COMPANY, LIMITED.

370 Lombard Street, E.C.,

10th December, 1939.

Sir,

I beg to give you notice that a meeting of the directors will be held at the registered office of the company on _____ next,
the _____ day of _____, at _____ a.m.

ANDREW ARMSTRONG,

Secretary.

, Esq.

If the directors have given instructions that when any special business is to be brought up for consideration, a brief intimation of its nature is to be included in the notice, an addendum to the foregoing would take this form:

"Business to be transacted:

"General business, and the proposed purchase of further premises in _____ Street, N.E."

As it is the duty of the directors to attend the meetings of the board, it is not necessary to burden the notice with the full contents of the agenda, but unless the agenda is sent with the notice a full note of the proposed business should be sent.

2. Agenda of board meeting

Held on _____, 19____, at the company's registered office.

AGENDA.	CHAIRMAN'S NOTES.
<i>Present</i> }	<i>A. B. in the chair.</i> <i>C. D.</i> <i>E. F.</i> <i>G. H.</i> directors.
<i>In attendance</i> }	<i>M. N., solicitor of the company.</i>
<i>Read Minutes of last meeting</i>	<i>Read and signed.</i>
<i>Submit Bank Pass Book, with adjustment account to agree same with cash book ..</i> <i>And statement of ways and means.</i>	<i>Examined, and secretary instructed to request bank to transfer £500 from deposit to current account.</i>
<i>Report Cheques (if any) signed since last meeting</i> .. }	<i>Approved.</i>
<i>Produce List of Accounts for payment, and submit cheques in payment of same for signature</i> }	<i>All except P. T.'s account approved and cheques signed.</i> <i>Secretary to write to P. T. respecting shortage of delivery.</i>
<i>Submit Transfer Deeds, Nos. to</i> .. }	<i>Passed for registration. Certificates ordered to be signed and sealed.</i>
<i>Seal Certificates Nos. to</i> <i>, in place of Certificates</i> <i>Nos. cancelled</i> .. }	<i>Cancelled certificates examined.</i> <i>New certificates signed and sealed.</i>
<i>Allot 1000 Ordinary Shares applied for by the following:</i> <i>700 to of</i> <i>300 to of</i> }	<i>Allotted, and secretary ordered to send notice of allotment forthwith.</i>
[The foregoing and any kindred formal matters are generally disposed of <i>first</i> , so as to leave time for any special matters to be discussed fully and without interruption.]	
<i>Consider Report of Managing Director [or of committee, or sub-committee, as the case may be]</i> }	<i>Proposed engagement of Mr. L. K. at a salary of £200 per annum, and the erection of a new storage shed as recommended. Approved.</i>
<i>Examine Trading Account and cost and work details</i> .. }	<i>Examined: Reduction in cost of 2 per cent. noted.</i>
<i>Read Letter from A.Z., dated</i> 19____ }	<i>Secretary instructed to reply that</i>

AGENDA—*continued*.

Consider Draft Report to be
submitted to general meet-
ing. }
Fix date of general meeting. . }
Next meeting }

CHAIRMAN'S NOTES.

*Approved. Secretary instructed
to have this printed and sent
with notice of general meeting
for the inst., at 3 p.m.
inst., at 11 a.m.*

[It is, of course, impossible to enumerate the many special questions that may arise for consideration; but in constructing agenda it is, as stated above, the approved plan to arrange for taking the formal business first, and routine correspondence is generally considered after the signing of the minutes.]

3. Minutes of board meeting

The "notes" of the chairman appended to the foregoing agenda will, when recorded in minutes, appear in the following form:

At a meeting of the board of directors of THE COMPANY,
LIMITED, held at the registered offices of the company on
the day of , 19 .

Present—Mr. A. B. in the chair.

„ C. D.

„ E. F.

„ G. H. *directors.*

And in attendance on the board—

Mr. M. N., the company's solicitor.

1. *Minutes*.—The minutes for the board meeting held on
ult., were read and verified, and ordered to be signed.

2. *Finance*.—The bank pass book was compared with the cash
book, showing, with adjustments, available cash balance of £

A further statement of ways and means was produced showing—

Accounts falling due and payable by the company within the next month, £	Falling due and payable to the company within the next month, £
--	---

The secretary was directed to request the bankers to transfer
£500 from deposit account to current account.

Details of cheques drawn since last meeting were submitted and
approved.

Lists of accounts due for payment, with their corresponding
vouchers, were submitted, and cheques for all these, except the
account of P. T. & Co., were signed.

The secretary was instructed to write to P. T. & Co. respecting
an alleged shortage of delivery in their last consignment.

3. *Transfers*.—Transfer deeds, numbered to inclusive, as appearing in the transfer register, were submitted and passed by the board. It was resolved that the transferees be entered in the register of members and that certificates for the shares transferred be signed and sealed.

Share certificates, Nos. for shares, were thereupon *Cancelled* by the board and new certificates for shares, Nos. to , were signed and sealed.

Applications received from—

Mr. , of , for 700 Ordinary Shares
Mr. , of , „ 300 „ „ „

were submitted and approved, and it was *Resolved* that the shares applied for be allotted, and that the secretary be instructed to send to the applicants notice of allotment forthwith.

4. *Report of managing director*.—The report of the managing director was read, and the engagement of Mr. L. K. at a salary of £200 per annum, and also the erection of a new storage shed at a cost not to exceed £ as recommended, were approved.

“Trading account” and “cost and work details” to date were examined, and a reduction of 2 per cent. in the cost of production noted by the board.

5. *Correspondence*.—A letter dated , from A. Z., with reference to was read, and the secretary was instructed to reply that

6. *Annual meeting*.—A draft notice convening the annual general meeting, together with a draft report of directors, were *Considered* and with some alterations approved, and ordered to be printed and sent to the shareholders, the date of the meeting being fixed for 3 p.m., on the inst., at .

7. *Next meeting*.—The next meeting of the board was fixed for the inst., at 11 a.m., at the registered office, and the secretary was instructed to have proofs of the report and notice of general meeting ready for the use of the board by that date.

Chairman.
(*Date.*)

4. Notice of statutory meeting

370 Lombard Street, London, E.C.

, 19

THE

COMPANY, LIMITED.

NOTICE IS HEREBY GIVEN that in accordance with the provisions of Section 113 of the Companies Act, 1929, the statutory meeting

of this company will be held at
 on the day of 19 , at
 two o'clock in the afternoon.

A copy of the report required to be sent to the members by the above-named section accompanies this notice.

By order of the board,

ANDREW ARMSTRONG,
Secretary.

5. Agenda of statutory meeting

[As the contents of the report to be presented to the shareholders, seven days before the statutory meeting are fully set out in Section 113 of the Companies Act, 1929, and cover the whole ground, the agenda of such a meeting is very simple :—]

THE

COMPANY, LIMITED.

First general [or statutory] meeting, held at
 on , 19 , at o'clock.

CHAIRMAN'S NOTES

[*Read notice convening the meeting] ..	<i>Read</i>
Ask the meeting whether the statutory report may be taken as read, or whether it shall be read	<i>Taken as read</i>
Chairman to direct the attention of the meeting to the fact that a list of the shareholders in the company is, in accordance with Section 113 of the Act, open to the inspection of members during the continuance of the meeting.. ..	<i>List produced and shown</i>
Chairman to make short statement of the company's position and prospects, supplementing to some extent the statutory report, and invite inquiries from members who do not understand any of the contents of the report	<i>Statement made</i>

After the chairman has answered such questions to the best of his ability, the members are at liberty to discuss any matter relating to the formation of the company, or arising out of the statutory report, whether previous notice has been given or not ; but no resolution of which notice has not been given in accordance with the articles may be passed ; or the meeting may adjourn from time to time.

When such discussion has ceased, if no adjournment has been determined upon by the meeting, the chairman will *declare* the meeting closed

* See, however, *ante*, p. 194.

6. Minutes of statutory meeting

Reproduced in minutes the foregoing will appear as follows :

At the first general [or statutory] meeting of THE
COMPANY, LIMITED, held at _____, on
Present—_____ in the chair

Shareholders : {

[*The notice convening the meeting was read]; the statutory report being, with the consent of the meeting, taken as read.

The chairman directed the attention of the meeting to the fact that a list of the shareholders in the company was, in accordance with the provisions of the Act, placed on the table and would remain open to the inspection of members during the continuance of the meeting.

The chairman then made a short statement on the company's position and prospects, supplementing to some extent the information contained in the statutory report, and invited inquiries from those members who had any difficulty in understanding the report.

After answering all the questions addressed to him, a discussion arose respecting the formation of the company, in which members A and B and C took part, on the conclusion of which—as there was no business to transact—the meeting closed, with a vote of thanks to the chairman.

Chairman.

(Date.)

7. Notices of annual or ordinary general meetings

[As the annual general meeting is an "ordinary" meeting it is generally described in the notice as the "second" or "third"—as the case may be—ordinary general meeting of the company.]

THE

COMPANY, LIMITED.

Street, London, E.C.

19 .

NOTICE IS HEREBY GIVEN that the [second] ordinary general meeting of this company will be held at _____, on _____, the _____ day of _____, 19____, at two o'clock in the afternoon, for the following purposes :—

* See, however, *ante*, p. 194.

To receive and consider the report of the directors, the annual statement of accounts and balance sheet, and the auditors' report thereon.

To declare dividends and to transact the other ordinary business of the company.

Notice is also hereby given that the transfer books of company will be closed from the _____ to the _____, 193 , both days inclusive.

By order of the board,

Secretary.

As the shareholders are under no duty to attend meetings it is, of course, necessary to indicate the nature of the business to be transacted, and no "*special*" business, i.e. business not specified in the Articles as that which may be transacted at an ordinary meeting (see Clause 44 of Table A) can be legally transacted at an ordinary meeting without special notice. When, therefore, it is desired to transact any other business at an ordinary meeting (to save calling the shareholders together again), the notice must also contain the words "And to transact the following special business: viz.—"

8. Agenda for ordinary general meeting

THE _____ COMPANY, LIMITED.
[Second] ordinary general meeting, to be held at _____
on _____ 19 , at _____ o'clock

AGENDA.	CHAIRMAN'S NOTES.
[*Read notice convening the meeting] ..	<i>Read.</i>
<i>Read</i> report of auditors	<i>Read.</i>
<i>Ask</i> the meeting whether the directors' report and the accounts as submitted and printed shall be read or taken as read }	<i>Taken as read.</i>

[Generally, the minutes of the last general meeting will have been read and signed at the next succeeding board meeting, so that it is not necessary to read them at a succeeding general meeting and thus delay the proceedings for that purpose, but the confirmation of the minutes should be repeated at the next general meeting. Section 120 of the Act, however, only provides for the necessity of minutes being signed by the chairman of the meeting or of the succeeding meeting, which he may do at any time; but the better practice is to have the minutes verified as to their accuracy by a meeting before the chairman formally signs them. The auditors' report, on the other hand, *must be read* at the general meeting at which the balance sheet is submitted, and be open to inspection by any shareholder (Section 129 of the Companies Act, 1929)].

* See, however, *ante*, p. 194.

AGENDA—continued.

Chairman to make statement of the company's position and general prospects, and }

Move that the report and accounts as audited and certified, now before the meeting, be approved and adopted }

Call on to second the motion

Ascertain whether the shareholders have any points to discuss or questions to ask, arising out of this motion }

Reply to any questions

Put the motion to the meeting and declare the result }

Elect a director in place of Mr. W., retiring by rotation }

Move that the dividends recommended by the directors in their report, viz. 6 per cent. on the preference shares and 7½ per cent. on the ordinary shares, be approved and paid to shareholders appearing on the register of members at the closing of the books on inst. }

Invite a shareholder to move that Messrs. R. and Son, chartered accountants, be re-elected as auditors of the company at a remuneration of £ }

Declare proceedings at an end

CHAIRMAN'S NOTES.

Statement made.

Moved.

Seconded by

Discussion and questions asked.

Questions answered.

Put and carried unanimously.

Proposed by Mr. A. ; seconded by Mr. B. Mr. W. re-elected.

Seconded by Mr. C. Carried.

Moved by Mr. M. ; seconded by Mr. N. Carried.

9. Minutes for ordinary meeting

At the [second] ordinary general meeting of THE COMPANY LIMITED, held at on

Present— in the chair.

Shareholders : {

1. *Reports and accounts.*—[*The notice convening the meeting] and the auditors' report were *Read*. The directors' report and accounts were, with the consent of the meeting, taken as read.

* See, however, *ante*, p. 194.

After the chairman had addressed the meeting and replied to all the questions addressed to him, it was, on the motion of the chairman, seconded by Mr. , unanimously *Resolved* "that the report and accounts to , 19 , as audited and certified by the company's auditors, be approved and adopted."

2. *Directors*.—On the proposition of Mr. A., seconded by Mr. B., it was *Resolved* that Mr. W., the director retiring by rotation, be re-elected.

3. *Dividend*.—It was then on the motion of the chairman, seconded by Mr. C., unanimously *Resolved* that the dividends recommended by the directors in their annual report, viz. 6 per cent. on the preference shares and $7\frac{1}{2}$ per cent. on the ordinary shares, be approved, and that the dividends be paid to those members whose names appeared in the register of members at the date of closing the books on inst.

4. *Auditors*.—It was proposed by Mr. M., seconded by Mr. N., and *Resolved* that Messrs. R. & SON, chartered accountants, be re-elected as the auditors of the company at a remuneration of £ per annum.

The meeting then terminated with a vote of thanks to the board.

(Signed),

Chairman.

(*Date.*)

10. Notice of extraordinary general meeting

NOTICE IS HEREBY GIVEN that an extraordinary general meeting of this company will be held at , on , the day of , 19 , at o'clock in the afternoon, when the subjoined resolution† will be submitted, and notice is hereby given that at the same time and place and on the same day at o'clock in the afternoon, or so soon afterwards as the extraordinary general meeting shall be concluded, the ordinary general meeting of the company will be held for the purpose of [here set out the business to be transacted].

[†Here set out the resolution.]

By order of the board,

Secretary.

11. Agenda of extraordinary general meeting

THE COMPANY, LIMITED.

Extraordinary general meeting to be held at on
19 , at o'clock.

AGENDA.	CHAIRMAN'S NOTES.
[*Read notice convening the meeting] ..	<i>Read.</i>
Chairman to make statement as to the circumstances which have arisen rendering it advisable for the company to pass the following resolution	<i>Statement made.</i>
Moved " That	<i>Moved.</i>
Call on .. to second the motion ..	<i>Seconded by</i>
Reply to any questions that may be addressed to him respecting the matter	<i>Mr. Questions replied to.</i>
Put the motion to the meeting and declare result	<i>Carried.</i>
Declare the meeting closed.	

12. Minutes of extraordinary general meeting

At an extraordinary general meeting of THE
COMPANY, LIMITED, held at .. on the .. day of
19 .. , at .. o'clock.

Present— .. in the chair.

Shareholders : {

[*The notice convening the meeting was read.] The chairman then made a short statement as to the circumstances which had arisen rendering it advisable for the company to pass the resolution, of which notice had been given, and

Moved " That

This was seconded by Mr. .. , and after the chairman had replied to a number of questions on the subject addressed to him, it was put to the meeting and unanimously carried without [or with the following] amendment.

The proceedings then terminated.

13. Notice of an ordinary and an extraordinary general meeting to be held on the same date

[Occasionally, to avoid calling the shareholders together with unnecessary frequency, a notice will be given of two meetings

* See, however, *ante*, p. 194.

on the same day. The latter part of such a notice will then read]—

“And notice is hereby also given that at the same place and on the same day, at _____ o'clock in the afternoon, or so soon afterwards as the [ordinary] general meeting shall be concluded, [an extraordinary] general meeting of the company will be held for the purpose of ” etc.

By order of the board,

Secretary.

14. Form of proxy

THE EVENING STAR COMPANY, LIMITED.

I, John Beaven Welson, of 116 Chancery Lane, London, W.C., in the county of London, being a member of THE EVENING STAR COMPANY, LIMITED, hereby appoint [or failing him _____, both members of the company, or failing him the chairman of the meeting], as my proxy to vote for me and on my behalf at the [ordinary or extraordinary, *as the case may be*] general meeting of the company to be held on the 7th day of September, 1939, and at any adjournment thereof, and at every poll that may take place in consequence thereof.

As witness my hand this 2nd day of August, 1939.

Signed by the said John Beaven Welson in the presence of Alfred Parker, Clerk, of 1 Essex Court, Temple, E.C.

[If articles so require, a proxy must be attested by one witness.]

Form 100.

NOTICE TO DISSENTING SHAREHOLDERS.

<i>Re</i> (a)	LIMITED.
NOTICE by (b)	LIMITED.

To (c)		
WHEREAS on the	day of	19 ,
(b)		LIMITED,
made an offer to all the Holders of (d)		Shares
in (a)		
		LIMITED.
(e)		

AND WHEREAS up to the _____ day of _____ 19 ,
being a date within four months of the date of the making thereof

such offer was approved by the Holders of not less than nine-tenths in value of the (d) Shares in the Company.

Now THEREFORE the said (b)

LIMITED,

in pursuance of the provisions of Section 155 of The Companies Act, 1929, HEREBY GIVES YOU NOTICE that it the said (b)

LIMITED,

desires to acquire the (d) Shares in the said (a)

LIMITED, held by you.

AND FURTHER TAKE NOTICE that unless upon an application made to the Court by you the said (c) day of 19 , on or before the being one month from the date of this Notice the Court thinks fit to order otherwise, the said (b)

LIMITED, will be entitled and

bound to acquire the (d) Shares held by you in the said (a)

LIMITED, on the terms of the

above-mentioned offer approved by the approving (d) Shareholders in the said Company.

Signature : For (b)

LIMITED,

Officer

(State whether a Director, or the Manager, or the Secretary of the Company.)

Dated the day of 19

(a) Insert the Name of the Transferor Company.

(b) Insert the Name of the Transferee Company.

(c) Insert the Name and Address of Dissenting Shareholder.

(d) If the offer is limited to a certain class or classes of Shareholders, insert particulars of the shares.

(e) State shortly the nature of the offer.

WINDING-UP RULES, 1929

FORM No. 46

NOTICE TO EACH MEMBER OF COMMITTEE OF INSPECTION OF MEETING FOR SANCTION TO PROPOSED CALL

(Title)

Take notice that a meeting of the committee of inspection of the above company will be held at on the (a) day of 19 ; at o'clock in the noon, for the purpose of considering and obtaining the sanction of the committee to a call of £ per share proposed to be made by the liquidator on the contributories.

No. 48

RESOLUTION OF COMMITTEE OF INSPECTION SANCTIONING CALL

Resolved, that a call of £ per share be made by the liquidator on all the contributories of the company [*or, as the case may be*].

(Signed)

Members of the Committee
of Inspection.

Dated this day of 19 .

No. 71

NOTICE TO CREDITORS OF FIRST MEETING

(Title)

(Under the order for winding up the above-named Company,
dated the day of , 19 .)

Notice is hereby given that the first meeting of creditors in the
above matter will be held at on the day of
 , 19 , at o'clock in the noon.

To entitle you to vote thereat your proof must be lodged with me
not later than o'clock on the day of , 19 .

Forms of proof and of general and special proxies are enclosed
herewith. Proxies to be used at the meeting must be lodged with
me at in the County of not later than
o'clock on the day of , 19 .

Official Receiver.

Address.

(The Statement of the Company's affairs (a) .)

(a) Here insert "has not been lodged" or "has been lodged, and summary is enclosed."

NOTE

At the first meetings of the creditors and contributories they may amongst other things :

1. By resolution determine whether or not an application is to be made to the Court to appoint a liquidator in place of the Official Receiver.

2. By resolution determine whether or not an application shall be made to the Court for the appointment of a committee of inspection to act with the liquidator, and who are to be the members of the committee if appointed.

NOTE.—If a liquidator is not appointed by the Court the Official Receiver will be the liquidator.

No. 72

NOTICE TO CONTRIBUTORIES OF FIRST MEETING

(Title)

Notice is hereby given that the first meeting of the contributories in the above matter will be held at _____ on the _____ day of _____, 19____, at _____ o'clock in the _____ noon.

Forms of general and special proxies are enclosed herewith. Proxies to be used at the meeting must be lodged with me at _____ in the County of _____ not later than _____ o'clock on the day of _____, 19____.

Dated this _____ day of _____, 19____. _____ Official Receiver.

(The Company's statement of affairs (a) _____.)

(a) Here insert "has not been lodged," or "has been lodged, and summary is enclosed."

NOTE

At the first meetings of creditors and contributories they may amongst other things

1 By resolution determine whether or not an application shall be made to the Court to appoint a liquidator in place of the Official Receiver.

2 By resolution determine whether or not an application shall be made to the Court for the appointment of a committee of inspection to act with the liquidator, and who are to be the members of the committee if appointed

NOTE.—If a liquidator is not appointed by the Court the Official Receiver will be the liquidator.

No. 73

NOTICE TO DIRECTORS AND OFFICERS OF COMPANY TO ATTEND FIRST MEETING OF CREDITORS OR CONTRIBUTORIES

(Title)

Take notice that the first meeting of creditors [*or contributories*] will be held on the _____ day of _____, 19____, at _____ o'clock at (a) _____ and that you are required to attend thereat, and give such information as the meeting may require.

Dated this _____ day of _____, 19____. _____ Official Receiver.
To (b) _____

(a) Here insert place where meeting will be held.

(b) Insert name of person required to attend.

No. 75

LIST OF CREDITORS (a) TO BE USED AT EVERY MEETING
(Title)

Meeting held at		this	day of			, 19 .		
Con- secutive Number.	Names of creditors (a) present or represented.	Amount of Proof (b).						
		In person.			Proxies.			
		£	s.	d.	£	s.	d.	
1								
2								
3								
4								
5								
6								
7								
7	Total number of creditors (a) present or represented.							

(a) "Or contributories."

(b) In case of contributories insert "number of shares" and "number of votes" according to the regulations of the Company.

No. 75

NOTICE OF MEETING [GENERAL FORM]

(Title)

Take notice that a meeting of creditors [or contributories] in the
above matter will be held at _____ on the _____ day of
19 , at _____ o'clock in the _____ noon.

Agenda

(a)

Dated this _____ day of _____ 19 .

(Signed) (b)

Forms of general and special proxies are enclosed herewith.
Proxies to be used at the meeting must be lodged with _____ at

not later than , in the County of
19 o'clock on the day of

(a) Here insert purpose for which meeting called.

(b) "Liquidator" or "Official Receiver," or as the case may be.

No. 76

AFFIDAVIT OF POSTAGE OF NOTICES OF MEETING

(Title)

I, a (a) , make oath and say as follows :

1. That I did on the day of 19 , send to each creditor mentioned in the Company's statement of affairs [or to each contributory mentioned in the register of members of the Company] a notice of the time and place of the (b) in the form hereunto annexed marked "A."

2. That the notices for creditors were addressed to the said creditors respectively according to their respective names and addresses appearing in the statement of affairs of the Company or the last known addresses of such creditors.

3. That the notices for contributories were addressed to the contributories respectively according to their respective names and registered or last known addresses appearing in the register of the Company.

4. That I sent the said notices by putting the same prepaid into the post office at before the hour of o'clock in the noon on the said day.

Sworn, &c.

(a) State the description of the deponent.

(b) Insert here "general" or "adjourned general" or "first" meeting of creditors [or contributories as the case may be].

No. 77

CERTIFICATES OF POSTAGE OF NOTICES (GENERAL)

(Title)

I, a clerk in the office of the Official Receiver, hereby certify :

1. That I did on the day of 19 , send to (a) a notice of the time and the place of the first meeting, or (b) in the form hereunto annexed marked "A."

Paragraphs 2, 3, and 4 as in last preceding form.

(Signature.)

Dated

(a) Each creditor mentioned in the statement of affairs, or each contributory mentioned in the Register of Members of the Company, or as the case may be.

(b) "A general meeting" or "adjourned general meeting," or as the case may be.

No. 78

AUTHORITY TO DEPUTY TO ACT AS CHAIRMAN OF MEETING AND
USE PROXIES

(Title)

I, _____ the Official Receiver of
do hereby nominate Mr. _____ of
to be chairman of the meeting of creditors [*or contributories*] in the
above matter, appointed to be held at _____ on the
day of _____ 19____, and I depute him (a)
to attend such meeting and use, on my behalf, any proxy or proxies
held by me in this matter.

Dated this _____ day of _____ 19____. _____
Official Receiver.

(a) *Here insert "Being a person in my employment or under my official control" or
"being an officer of the Board of Trade"*

No. 79

MEMORANDUM OF ADJOURNMENT OF MEETING

(Title)

Before
at _____
on the _____ day of _____, 19____, at
o'clock.

Memorandum.—The (a) _____ Meeting of (b)
_____ in the above matter was held at the time and
place above mentioned; but it appearing that (c)
the meeting was adjourned until the _____ day of
_____ 19____, at _____ o'clock in the
noon, then to be held at the same place.

Chairman.

(a) "First," *or as the case may be.*

(b) Insert "creditors" *or* "contributories," *as the case may be.*

(c) Here state reason for adjournment.

No. 80

GENERAL PROXY

(Title)

I/Wo, _____ of _____, a creditor [*or contributory*] hereby
appoint (1) _____ to be my/our general proxy to vote at the
Meeting of Creditors [*or Contributories*] to be held in the above
matter on the _____ day of _____ 19____, or at any adjourn-
ment thereof.

Dated this _____ day of _____ 19____.
[Signed] (2)

NOTES.

1. The person appointed general proxy may be *either* the Official Receiver, the Liquidator, or such other person as the creditor [or contributory] may approve, and the proxy form when signed must be lodged by the time and at the address named for that purpose in the notice convening the meeting at which it is to be used.

2. If a firm, sign the firm's trading title, and add "by A.B., a partner in the said firm." If the appointor is a corporation, then the Form of Proxy must be under its Common Seal or under the hand of some officer duly authorised in that behalf, and the fact that the officer is so authorised must be stated thus :—

For the

Company.

J.S. (duly authorised under the seal of the Company).

Certificate to be signed by person other than Creditor [or Contributory] filling up the above Proxy.

I, _____ of _____, being a (a) _____ hereby certify that all insertions in the above proxy are in my own handwriting, and have been made by me at the request of the above-named _____ and in his presence, before he attached his signature [or mark] thereto.

Dated this _____ day of _____ 19 _____.
(Signature.)

In a voluntary winding up the Liquidator or if there is no Liquidator the chairman of a meeting may but the Official Receiver may not be appointed proxy. The proxy form will be altered accordingly.

(a) Here state whether clerk or manager in the regular employment of the creditor or contributory or a commissioner to administer oaths in the Supreme Court (*see* Rule 145).

No. 81

SPECIAL PROXY

(Title)

I/We, _____ of _____, a creditor [or contributory], hereby appoint (1) _____ as my/our proxy at the meeting of creditors [or contributories] to be held on the _____ day of _____ 19 ___, or at any adjournment thereof, to vote (a) _____ the resolution Nod. _____ in the notice convening.

Dated this _____ day of _____ 19 _____.
[Signed] (2)

NOTES

1. The person appointed proxy may be the Official Receiver, the Liquidator, or such other person as the creditor [or contributory] may approve, and the proxy form when signed must be lodged by the time and at the address named for that purpose in the notice convening the meeting at which it is to be used. A creditor [or contributory] may give a special proxy to any person to vote at any specified meeting or adjournment thereof on all or any of the following matters :—

- (i) For or against the appointment or continuance in office of any specified person as liquidator or as member of the committee of inspection ;
- (ii) On all questions relating to any matter, other than those above referred to, arising at a specified meeting or adjournment thereof.

2. If a firm, sign the firm's trading title, and add "by A.B., partner in the said firm." If the appointor is a corporation, then the form of proxy must be under its common seal or under the hand of some officer duly authorised in that behalf, and the fact that he is so authorised must be so stated.

Certificate to be signed by person other than Creditor or Contributory filling up the above Proxy.

I, _____ of _____, being a (b) _____ hereby certify that all insertions in the above proxy are in my own handwriting, and have been made by me at the request of the above-named _____ and in his presence before he attached his signature (or mark) thereto.

Dated this _____ day of _____ 19 _____.
(Signature).

In a voluntary winding up the Liquidator or if there is no Liquidator the chairman of a meeting may but the Official Receiver may not be appointed proxy. The proxy form will be altered accordingly.

The proxy must be lodged with the Official Receiver or Liquidator not later than the time named for that purpose in the notice convening the meeting at which it is to be used.

(a) Here insert the word "for" or the word "against" as the case may require, and specify the particular resolution.

(b) Here state whether clerk or manager in the regular employment of the creditor or contributory or a commissioner to administer oaths in the Supreme Court (*see* Rule 145).

APPENDIX VI
EXAMINATION QUESTIONS

CHARTERED INSTITUTE OF SECRETARIES

FINAL EXAMINATION—JUNE, 1936.

1. Discuss the expression "clear days" with special reference to Sundays and holidays.
2. Distinguish between the powers of the chairman at :
 - (a) a meeting of a club ;
 - (b) a company meeting ; and
 - (c) a meeting of a local authority.
3. In what circumstances is the chairman of a meeting entitled to refuse an amendment ?
4. What do you understand by :
 - (a) "Substantive motion" ;
 - (b) "Adjourned *sine die*" ; and
 - (c) "Kangaroo closure" ?
5. Write a note on the defence of "Privilege" in relation to defamatory speeches made at a meeting.
6. A newspaper report of a meeting of a borough council quoted a statement made by Councillor A. which was defamatory of Councillor B. Councillor B. commenced an action for libel against the newspaper. Discuss the liability (if any) of the newspaper.
7. What rights has a newspaper reporter to attend the meetings of :
 - (a) the education committee of a county borough ;
 - (b) the highways committee of a county council ; and
 - (c) the council of a rural district ?
8. What powers has a chairman in regard to the preservation of order at a public meeting ?
9. Explain the expression "the minutes of a meeting."
What rights has a shareholder in a company to inspect the minutes of :
 - (a) a meeting of the shareholders ; and
 - (b) a meeting of the directors ?
10. In what circumstances may shareholders of a company requisition a meeting ?

11. Write a note on each of the following :

- (a) An ordinary resolution.
- (b) An extraordinary resolution.
- (c) A special resolution.

12. What is a "proxy" ? State the effect of the provisions of "Table A" relating to proxies.

†13. What are the requirements as to the place and time of meeting of a municipal corporation ? Who have the right to convene such a meeting ?

†14. What are "Standing Orders" ? When may they be suspended ?

†15. In what circumstances is a councillor not entitled to vote at a meeting of his council ?

†16. What are the statutory provisions relating to the minutes of a local authority ?

FINAL EXAMINATION—NOVEMBER, 1936.

17. Write a note on what is necessary to constitute a valid meeting.

18. Explain the expression "Agenda paper"; draft an agenda paper for the annual general meeting of a club.

19. Distinguish between "motion" and "resolution"; how may a resolution be rescinded ?

20. Discuss the methods by which the opinion of a committee can be ascertained; what are the powers and duties of the chairman in this respect ?

21. Write a note on each of the following :

- (a) "Justification"; and
- (b) "Fair comment."

22. State the effect of the statutory provisions relating to the prevention of disorderly conduct at public meetings.

23. When can a newspaper reporter be refused admission to a meeting of :

- (a) a county council;
- (b) a committee of a county council; and
- (c) a general meeting of a company ?

24. Discuss the circumstances in which a newspaper report of a meeting may be privileged and when the privilege is lost.

25. How is a director of a company appointed and in what circumstances is his office vacated ?

† The last three or four questions in each final examination of the C.I.S. have reference only to meetings of local authorities.

26. Distinguish between the various kinds of meetings of shareholders.

27. State the effect of the regulations in "Table A" with regard to proceedings at general meetings.

28. Explain the expression "proxies" and how they are regulated.

†29. Distinguish between a parochial committee and a committee of a parish meeting.

†30. What is the procedure for convening a meeting of a rural district council and what quorum is required?

†31. In what ways may a councillor cease to be a member of a council?

†32. State with examples the matters which must be recorded in the minutes of a meeting of a borough council.

FINAL EXAMINATION—JUNE, 1937.

33. Distinguish between "fair comment" and "qualified privilege."

34. Explain how the Public Meeting Act, 1908, section 1, is amended by the Public Order Act, 1936, section 6, in relation to the powers of a police constable.

35. What are the "stewards" of a meeting? What is the effect of the statutory provisions relating thereto?

36. In what circumstances may a report of a public meeting enjoy statutory privilege?

37. Define a "quorum" and state what it is at (a) a meeting of a members' club; (b) a meeting of company directors; and (c) a public meeting.

38. Enumerate the kinds of motions which can interrupt the discussion of an ordinary motion and write short notes on any two of them.

39. Write a note on "the minutes of a meeting."

40. Discuss the usual methods of obtaining the opinion of a meeting.

41. Write a note on "adjournment" in relation to meetings of a company.

42. What are the powers of a shareholder in regard to calling a meeting of a company?

43. Write a note on a "statutory meeting" of a company.

† The last three or four questions in each final examination of the C.I.S. have reference only to meetings of local authorities.

44. State the effect of the regulations in "Table A" with regard to "notices."

†45. What is a parish meeting? When may it be held? And how is it convened?

†46. Write a note on "Standing Orders," giving three examples which are applicable to a meeting of an urban district council.

†47. Define "casting vote" and give examples of casting votes conferred by statute in relation to local authorities.

†48. In what circumstances is a councillor not entitled to vote at a meeting of his council?

FINAL EXAMINATION—DECEMBER, 1937.

49. State the conditions necessary to be fulfilled in order that a meeting may be valid.

50. Discuss the circumstances under which a meeting may be adjourned.

51. Write short notes on each of the following:

- (a) "The previous question."
- (b) "Substantive motion."

52. What is a "proxy" and how may it be used?

53. Explain the difference between "qualified privilege" and "justification."

54. State the effect of the Public Order Act, 1936, with regard to:

- (a) offensive weapons; and
- (b) offensive conduct.

55. When may a person be expelled from a meeting of a club?

56. Discuss the circumstances in which a report in a newspaper may be privileged.

57. Explain the powers of a shareholder in regard to calling a company meeting.

58. Write a note on proceedings at general meetings of a company.

59. Discuss the duties of a chairman of a meeting of directors.

60. State the effect of the provisions in "Table A" in regard to notices of:

- (a) general meetings; and
- (b) directors' meetings.

† The last three or four questions in each final examination of the C.I.S. have reference only to meetings of local authorities.

†61. In what circumstances is a newspaper reporter entitled to be present at a meeting of :

- (a) the council of a county borough ;
- (b) the education committee of a county borough ;
- (c) the finance committee of a non-county borough ?

†62. Explain the procedure for convening a meeting of a municipal corporation.

†63. Write a note on the " quorum " at meetings of local authorities.

†64. State the effect of the statutory provisions relating to the minutes of a local authority.

FINAL EXAMINATION—DECEMBER, 1938.

65. Discuss the importance of giving proper notice of a meeting of a society ? How can insufficient notice be remedied ?

66. What is a " quorum " ? Write brief notes on the quorum for :

- (a) A public meeting.
- (b) A meeting of a debating society.
- (c) The annual general meeting of a limited company.

67. Write a note on each of the following :

- (a) Agenda paper.
- (b) Casting vote.
- (c) Kangaroo Closure.

68. Write a note on keeping minutes. How can an incorrect minute be rectified ?

69. Discuss the circumstances in which a speech at a public meeting may be privileged.

70. State the effect of the Public Order Act, 1936, with regard to uniforms and weapons.

71. Discuss the responsibility of a newspaper for publishing a defamatory statement when reporting a company meeting.

72. Explain the powers of a chairman to expel from a meeting of a society :

- (a) A member.
- (b) A person who is not a member.
- (c) A newspaper reporter.

73. Discuss the principal powers of the chairman of a company meeting.

† The last three or four questions in each final examination of the C.I.S. have reference only to meetings of local authorities.

74. State the effect of the provisions in "Table A" with regard to "Notices."

75. Write a note on "proxies."

76. Distinguish the various kinds of shareholders' meetings.

†77. Discuss the expression "casting vote" in regard to meetings of local authorities.

†78. Discuss the ways in which a person may cease to be a member of a local authority.

†79. What matters must be recorded in the minutes of a meeting of a parish council?

†80. Explain the procedure for convening a meeting of a borough council.

FINAL EXAMINATION—JUNE, 1939.

81. Discuss the powers and duties of the chairman of a meeting, other than a company meeting, with regard to adjournment.

82. Explain the different ways in which the sense of a meeting of a society may be obtained.

83. What matters do you consider should be dealt with in drafting a code of rules governing the committee of a club?

84. Write short notes on each of the following:

- (a) Substantive motion.
- (b) Point of order.
- (c) The previous question.

85. What defences are open to a newspaper in which is reported a defamatory statement made:

- (a) at an election meeting;
- (b) at a meeting of a club;
- (c) at a meeting of a town council?

86. What responsibility has the chairman of a meeting in regard to the behaviour of a steward?

87. What do you understand by "malice"?

Discuss the effect of malice in a speech at a meeting.

88. What duties and powers have the police with regard to meetings?

89. What notice is required of the various meetings of shareholders of a company?

90. How are the votes of members obtained at a company meeting?

† The last three or four questions in each final examination of the C.I.S. have reference only to meetings of local authorities.

91. What are the requirements of Table A as to the election of directors at the annual meeting of a company ?

92. How is the quorum fixed for :

- (a) a directors' meeting ;
- (b) an annual general meeting of a company ?

†93. Discuss the statutory restrictions imposed upon the voting of a member at a meeting of the council.

†94. What quorum is necessary for meetings of local authorities ?

†95. Who may convene a meeting of a county council ?

Explain the statutory procedure.

†96. In what circumstances is a newspaper reporter entitled to be present at a meeting of :

- (a) a borough council ;
- (b) an education committee ;
- (c) a highway committee ?

THE CORPORATION OF CERTIFIED SECRETARIES

FINAL EXAMINATION—MAY, 1936.

97. What are the chief provisions of the Public Meetings Act, 1908, regarding the keeping of order ?

98. Define :

- A "Count out."
- Dilatory Motion.
- Negative Amendment.

99. From whence does a Chairman derive his powers :

- (a) Generally ;
- (b) *re* Adjournment ?

100. What are the Quorums for either :

- (a) shareholders' meetings under Table A ; or
- (b) municipal corporation ?

101. What do you understand by "order of debate" ? Give the rules governing same either of :

- (a) any authority with which you are acquainted ; or
- (b) the usual procedure where there are no specific rules.

FINAL EXAMINATION—NOVEMBER, 1936.

102. In what way is a defendant in a slander action arising out of a company meeting in a favourable position ?

103. What are the leading points a secretary should have in mind when he is writing a minute, and what is done with a minute when it is completed ?

† The last three or four questions in each final examination of the C.I.S. have reference only to meetings of local authorities.

104. Give in brief outline history of right of the press to attend meetings of local authorities.

105. Explain "closure," "Kangaroo closure," and "closure by compartments" as used in the House of Commons.

106. Draft minutes of a statutory meeting.

107. Write a short note on each of the following: (a) disinterested quorum; (b) clear days; (c) chairman's power to adjourn company meeting; (d) majority rule.

108. Describe a secretary's duties in preparing for a Board meeting.

FINAL EXAMINATION—MAY, 1937.

109. Give a brief account of the provisions of any statute governing political meetings.

110. Is the Press entitled to admission to meetings of local authorities?

111. What are the main points to be borne in mind when drafting minutes?

112. Is a newspaper report of defamatory statements privileged?

113. Describe the principal duties of the chairman of a charity in relation to its meetings.

114. After a meeting of the directors of a statutory company it was discovered that the appointment of one of them had been improperly made; does this affect the acts done by that meeting?

115. What notice of a meeting of the Board must be given to the directors of a limited company?

116. Describe the system of voting by proxy.

117. What is meant by (a) statutory meeting, and (b) statutory report?

118. When and how is the Court called upon to convene a company meeting?

119. Explain the procedure of amending motions.

120. When and how may the power of expulsion be exercised?

FINAL EXAMINATION—NOVEMBER, 1937.

121. "The general meetings of companies are farcical formalities." "The general meetings of companies are great safeguards for the people's investments." Discuss these dicta.

122. Distinguish between extraordinary and special resolutions.

123. Draft either (a) agenda or (b) minutes for a board meeting of a limited liability company.

124. You are offered the choice of being appointed either chairman or honorary secretary of a society formed to further some public object in which you are intensely interested. Which would you choose ?

125. You are a member of an incorporated professional body and are aggrieved by the passing of a resolution in a manner which is, in your view, contrary to its constitution. What steps do you consider would be open to you ?

126. Describe the system of voting by show of hands.

127. An amendment to an amendment is proposed whilst discussion on a resolution is in progress. How should the chairman deal with the situation ?

128. Describe the committee system for carrying on the work of local authorities.

129. What is meant by " the right of free speech " ?

130. Mention some of the main principles of the law of libel affecting speakers at public meetings.

131. When should a meeting be adjourned, and what is the effect of adjournment ?

132. Has a secretary authority to summon a general meeting of a limited liability company ?

FINAL EXAMINATION—DECEMBER, 1938.

133. Compare and contrast :

- (a) motion to proceed to next business with moving the previous question ;
- (b) the closure and the motion to adjourn the debate ;
- (c) motion to lay on the table and motion to refer back.

Which, if any, of these motions can be subject to amendment ?

134. State shortly the general rules governing the adjournment of a meeting. When, if at all, is a chairman empowered to adjourn a meeting of his own volition ?

The notice of a meeting stated that in the event of a poll being demanded the meeting would forthwith adjourn to a specified place for the purpose of taking the poll. At the meeting a poll was demanded but a majority of those present objected to the adjournment. In these circumstances, was the chairman entitled to adjourn the meeting so that the poll might be taken ?

135. What are the requisites of a valid notice of a meeting ? If a person to whom notice is required to be given by the constitution of an assembling body waives his right to notice and does not

attend the meeting, is the meeting validly held ? Does it make any difference if the person to whom notice should have been given none the less attends the meeting and votes ?

136 Is it essential at common law

- (i) that minutes of a meeting be kept ,
- (ii) that where minutes are kept they be signed by the chairman at the meeting ,
- (iii) that minutes be confirmed by those present at the meeting or by a subsequent meeting ?

What is the primary function of minutes and what should they contain ? In what manner and to what extent can they be amended ?

137 Write a brief note on each of the following

- (a) Proxies , (b) removal of a chairman , (c) count out ;
- (d) agenda.

138 Distinguish the " popular " and the " parliamentary " methods respectively of dealing with amendments, stating what, in your view, are the advantages and disadvantages of each

Can the proposer of an original motion—

- (i) withdraw it, or
- (ii) propose an amendment thereto, or
- (iii) vote against it ?

Can the proposer of an amendment—

- (i) withdraw it, or
- (ii) propose a further amendment to the same original motion, or
- (iii) vote against it ?

139 Define and explain

- (a) Unlawful assembly , (b) riot

What is the effect of reading to an unlawful assembly the proclamation set out in the Riot Act ?

140. Differentiate between

- (a) absolute privilege and qualified privilege , (b) libel and slander , (c) privilege and fair comment

What special defences are available to a newspaper in an action against it for the publication of defamatory matter ?

141. Set out clearly the rules governing demands for a poll at a general meeting of a company

When, if at all, is a member of a company entitled to vote by proxy where the articles do not confer a right so to do ?

142. Has the court power to convene a meeting of a registered company where the directors omit or refuse to call one ?

What is the position if a meeting of a company is summoned under the authority of a board meeting at which :

- (a) a quorum of directors was not present ;
- (b) a quorum was present but one director was not notified of the board meeting and did not attend ?

143. What meetings (a) must, and (b) may be held by a parish council ? Indicate the formalities regulating the convention and holding of such meetings. Which of them are the public entitled to attend and in what circumstances ?

144. State the more important disqualifications from voting in the transaction of business by a county council.

How may a casual vacancy arise in a county council and how must it be filled ?

FINAL EXAMINATION—JUNE, 1939.

145. How is the chairman of a meeting appointed ? Are there any circumstances in which a meeting can continue after the appointed chairman has left the chair ?

146. Write a brief note on each of the following

- (i) Convening authority ,
- (ii) Postponement of meeting ,
- (iii) Rescission of resolution.

147. Distinguish between (a) substantive and formal motions, (b) original and amending motions. In which, if any, of such motions is the mover entitled to a second speech and in what circumstances ?

148. A public meeting has been convened to urge the necessity for the intensification of propaganda to encourage national effort in defence measures. Draft an appropriate form of resolution which, if adopted by the meeting, will be communicated to the Government, and suggest two amendments which might be proposed by persons present at the meeting.

149. What course should be taken by the chairman when :

- (i) a motion is proposed which impugns his impartiality as chairman ,
- (ii) his ruling on a point of order is challenged ,
- (iii) an amendment is moved but not seconded ;
- (iv) on a vote being taken, there is an exact equality of votes for and against a motion ?

150. Explain the following terms :

- (i) Closure.
- (ii) Kangaroo closure.
- (iii) Adjournment *sine die*
- (iv) A motion.

151. What are the powers of the police in relation to disorders arising at meetings on private premises ?

152. Discuss the "right of free speech" and indicate in what ways freedom of discussion is curbed by law.

153. Enumerate the various kinds of meetings of shareholders in a company, stating in each case the nature and function of such meetings.

154. Justify the statement, "directors cannot think without meeting," and state whether in your opinion it requires qualification.

155. State the statutory regulations as to the time and place of meetings of a county council. By whom may such meetings be convened ?

156. Explain and illustrate the "suspension of standing orders."

INDEX

[Pages 1-99 refer to meetings other than company meetings.
Pages 103-123 to statutory companies.
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